

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
3

4 UNITED STATES OF AMERICA,)
5 Plaintiff,) CR20-00174
6 v.) SEATTLE, WASHINGTON
7 ERIC SHIBLEY,)
8 Defendant.) November 16, 2021 -
9) 9:00 A.M.
10) TRIAL - DAY 2
11)
12)

13
14 VERBATIM REPORT OF PROCEEDINGS
15 BEFORE THE HONORABLE JOHN C. COUGHENOUR
16 UNITED STATES DISTRICT JUDGE
17

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1 THE CLERK: The next matter on the calendar is
2 CR20-174-JCC United States of America v. Eric Shibley.

3 THE COURT: Counsel, are you ready for the jury?

4 MS. CONNELLY: Yes, Your Honor.

5 THE COURT: All right. Let's bring them in.

6 (The following occurred in the presence of the jury.)

7 THE COURT: Please be seated, folks. All right.

8 MS. CONNELLY: The government calls Kathleen Moran.

9 KATHLEEN MORAN,

10 having been sworn under oath, testified as follows:

11 THE COURT: You can take your mask off.

12 DIRECT EXAMINATION

13 BY MS. CONNELLY:

14 Q Good morning, Special Agent Moran, can you please state your
15 name and spell your last name for the record?

16 A My name is Kathleen Moran, M-O-R-A-N.

17 Q And where do you work?

18 A I work for the FBI.

19 Q And what is your position at the FBI?

20 A I'm a special agent.

21 Q How long have you been employed at an FBI special agent?

22 A For 16 years.

23 Q And what are your duties as a special agent with the FBI?

24 A I investigate allegations of criminal activity.

25 Q And what types of cases do you investigate, in particular?

1 A I'm assigned to our white-collar squad here in Seattle. So I
2 investigate different types of fraud cases.

3 Q And how long have you been investigating white-collar cases?

4 A Sixteen years.

5 Q Did there come a time when you began investigating cases that
6 involved the Paycheck Protection Program and the Economic Injury
7 Disaster Loan program?

8 A Yes.

9 Q And when was that?

10 A In April of 2020.

11 Q And as part of those investigations, did you learn about the
12 programs?

13 A Yes.

14 Q And as part of those investigations, did you investigate the
15 defendant, Eric Shibley?

16 A Yes.

17 Q What did you find during your investigation of Eric Shibley?

18 A We learned that Mr. Shibley had applied for a number of PPP
19 and EIDL loan applications. And those applications contained
20 false and untrue statements.

21 Q And what types of investigative steps did you undertake?

22 A We conducted surveillance. We interviewed witnesses. We
23 obtained bank records, Secretary of State records, other sort of
24 documentation.

25 Q Okay. And as part of your investigation, did you look into

1 where the defendant lived between March 2020 and June 2020?

2 A Yes.

3 Q And what investigative steps did you take to determine where
4 the defendant was living?

5 A We conducted database checks to confirm the address, we also
6 obtained a number of records, such as bank account statements,
7 that showed the address for Mr. Shibley and his businesses. And
8 we conducted surveillance on that address. And we determined
9 that it was a medical office building. It had the name of Eric
10 Shibley MD on the outside of the building.

11 And further surveillance determined that Mr. Shibley was also
12 living in his office building.

13 Q And do you know the address of that building?

14 A It's 4700 36th Avenue Southwest, in Seattle.

15 Q And so I'm showing the witness what's been marked as
16 Government's Exhibit 100.

17 Do you recognize this photo?

18 A Yes. That is 4700 36th Avenue Southwest.

19 Q And is it a fair and accurate representation of 4700 36th
20 Avenue Southwest?

21 A Yes.

22 MS. CONNELLY: At this time, I would move Government's
23 Exhibit 100 into evidence.

24 MR. NANCE: No objection.

25 THE COURT: Admitted.

1 (Exhibit 100 was admitted.)

2 MS. CONNELLY: May I publish, Your Honor?

3 Q Approximately how many times did you visit this address in
4 person?

5 A Approximately five or six times.

6 Q And approximately what dates did you visit?

7 A In May and June of 2020.

8 Q Did you see the defendant at this address?

9 A Yes.

10 Q And what sort of activity did you find happening at the
11 address?

12 A Over the hours that we were watching this address, we saw
13 probably about one or two patients arrive and depart. And then
14 we saw Mr. Shibley come and go from this address.

15 Q And how could you tell that Mr. Shibley was living at the
16 address?

17 A We conducted surveillance late at night and early in the
18 morning, and it was pretty clear that, from pattern of life
19 activity, that he was living there.

20 Q And as part of the investigation, did you also review the
21 bank records related to Mr. Shibley?

22 A Yes.

23 Q And what did you find as a result of that review?

24 A We found that this address was on all of the bank records.

25 Q Great.

1 As part of your investigation, did you learn that Mr. Shibley
2 was the registered agent of certain businesses in the state of
3 Washington?

4 A Yes.

5 Q And did you collect evidence related to those businesses from
6 the Washington Secretary of State?

7 A Yes.

8 MS. CONNELLY: At this time, I would move into evidence
9 Government's Exhibits 70 through 75, pursuant to a business
10 records certification.

11 MR. NANCE: No objection.

12 THE COURT: Admitted.

13 (Exhibit Nos. 70 - 75 admitted.)

14 MS. CONNELLY: And may I publish those, Your Honor?

15 THE COURT: Yes.

16 Q Thank you.

17 So we're looking at Government's Exhibit 70. What is this
18 exhibit?

19 A This exhibit are records received from Washington State
20 Secretary of State for Dituri Construction LLC.

21 Q And the first page, what is this document?

22 A This is the certificate of formation for Dituri Construction.

23 Q What does it show?

24 A It shows that it was filed on January 2nd, 2020.

25 Q And does that mean that Dituri Construction was formed on

1 January 2nd, 2020?

2 A Yes.

3 Q And if we could look at page 4 of Government's Exhibit 70,
4 please. What is this document?

5 A This is an initial report for Dituri Construction.

6 Q And if we could look at page 5 of Government's Exhibit 70.
7 Who was the governor who was listed on the original initial
8 report?

9 A Thomas Dituri.

10 Q And turning to page 6 of Government's Exhibit 70, please,
11 what is this document?

12 A This is a statement of change for Dituri Construction.

13 Q When was it filed?

14 A April 30th, 2020.

15 Q And who was listed as the registered agent on April 30th,
16 2020?

17 A Eric Shibley.

18 Q And turning to page 10 of the exhibit, what is this document?

19 A This is an amended certificate of formation for Dituri
20 Construction.

21 Q What date was it filed?

22 A May 5th, 2020.

23 Q And what is an amended certificate of formation? What is
24 that doing?

25 A It is amending the initial certificate of formation.

1 Q And turning to the attachment, to the amended certificate of
2 formation, which is found on page 13 of Government's Exhibit 70;
3 what is this document?

4 A The operating agreement for Dituri Construction.

5 Q And if we look at the signature page, which is found on the
6 last page of the exhibit, what does the signature page of the
7 operating agreement show?

8 A It's signed by Eric Shibley and Thomas Dituri, and it shows
9 that Eric Shibley owns 90 percent of the LLC, and Thomas Dituri
10 owns 10 percent.

11 Q What was the date?

12 A It was May 5th, 2020.

13 Q I'm sorry, what's the date on the operating agreement,
14 Special Agent?

15 A I'm sorry, it was January 7th, 2020.

16 Q Thank you. And if we could turn to Government's Exhibit 72,
17 which are the documents from the Secretary of State for SS1 LLC.
18 On page 1 of this exhibit, what is this document?

19 A This is the certificate of formation for SS1 LLC.

20 Q When was this filed?

21 A October 3rd, 2017.

22 Q And moving to page 4 of this exhibit, if we could, what is
23 this document?

24 A This is a letter from the Secretary of State that's regarding
25 administrative dissolution of SS1.

1 Q And what is date of this document?

2 A March 3rd, 2020.

3 Q What does it mean to be administratively dissolved?

4 A If the entity is not complying with the annual filing
5 requirements, then they can be administratively dissolved.

6 Q Does that mean that they're basically no longer in good
7 standing with the state?

8 A Yes.

9 Q And looking at page 5 of Government's Exhibit 72, what is
10 this document?

11 A This is a statement of reinstatement for SS1 LLC.

12 Q And what date was SS1 LLC reinstated?

13 A April 6th, 2020.

14 Q And who was the registered agent?

15 A Eric Shibley.

16 Q Turning to Government's Exhibit 75, what is this exhibit?

17 A This is a certificate of formation for the A Team Holdings
18 LLC.

19 Q Does Government's Exhibit 75 contain all the documents
20 related to the A Team Holdings, for the Secretary of State?

21 A Yes, it does.

22 Q And when was A Team Holdings formed?

23 A This was filed on December 10th, 2018.

24 Q And looking at page 6 of this exhibit, what is this document?

25 A This is a notice from the Secretary of State of a delinquent

1 annual report.

2 Q And what date was that filed?

3 A January 1st, 2020.

4 Q What is this document informing the A Team Holdings of?

5 A That they had not filed their annual report for the year
6 2019, and if they continued to fail to file, and if they don't
7 file it by April 30th, 2020, that the LLC will be dissolved or
8 terminated.

9 Q Okay. And turning to page 7 of this exhibit. What is this
10 document?

11 A The annual report for the A Team Holdings.

12 Q What date was this document filed?

13 A March 31st, 2020.

14 Q And what was the nature of the business listed?

15 A It's real property investment.

16 Q And turning to the next page of this document, who was the
17 registered agent?

18 A Eric Shibley.

19 Q And looking under controlling interest, Question No. 1 asked:
20 Does your entity own real property, such as land or buildings?
21 And what is answered for that?

22 A The answer to that question was, "No."

23 Q Moving to Government's Exhibit 74, what is this exhibit?

24 A These are records provided by the Secretary of State for
25 Seattle's Finest Cannabis LLC.

1 Q And on page 1, what do we have?

2 A And this is the certificate of formation for Seattle's Finest
3 Cannabis.

4 Q What is date of formation for Seattle's Finest Cannabis?

5 A November 3rd, 2017.

6 Q And turning to page 7 of the exhibit, if we could. What is
7 this document?

8 A This is an amended certificate of formation.

9 Q And what date is this filed?

10 A May 13th, 2020.

11 Q And what does it say?

12 A It's for SFC LLC.

13 Q And so is it updating the name to SFC LLC?

14 A Correct.

15 Q How can you tell that?

16 A Seattle's Finest Cannabis and SFC LLC, both have the same UBI
17 number.

18 Q What is a UBI number?

19 A It's a number issued by the state of Washington for
20 businesses.

21 Q And turning to the second page of the amended certificate,
22 who was the registered agent?

23 A Eric Shibley.

24 Q And, finally -- or, not finally, I'm sorry, looking at
25 Government's Exhibit 73, what is this exhibit?

1 A These are documents received from the Secretary of State for
2 ES1 LLC.

3 Q And on page 1, what is this document?

4 A This is the certificate of formation for ES1 LLC.

5 Q When was it filed?

6 A It was filed October 25th, 2012.

7 Q Looking at page 5 of this exhibit, what is this document?

8 A This is the annual report for ES1 LLC.

9 Q And what is the date of this annual report?

10 A February 4th, 2020.

11 Q And who was the registered agent?

12 A Eric Shibley.

13 Q And moving on to Government's Exhibit 71, if we could, Mr.
14 Arnold, what is this exhibit?

15 A These are records received from the Secretary of State for
16 Eric R. Shibley MD, PLLC.

17 Q And what is page 1?

18 A It's the certificate of formation.

19 Q And when was the company formed?

20 A December 12th, 2012.

21 Q And turning to page 4 of the exhibit. What is this document?

22 A This is the annual report for Eric R. Shibley MD, PLLC.

23 Q When was it filed?

24 A March 31st, 2020.

25 Q Who was the registered agent as of March 31, 2020?

1 A Eric Shibley.

2 Q Great. I'm going to unpublish.

3 As part of your investigation, did you collect and review
4 phone records?

5 A Yes, we did.

6 Q So I'm going to show the witness Government's Exhibit 68, if
7 we can. Where did this record come from?

8 A This record was provided by T-Mobile.

9 Q What phone number is it for?

10 A It's for 206-771-7868.

11 MS. CONNELLY: At this time, I would move Government's
12 Exhibit 68 into evidence as a business record.

13 MR. NANCE: No objection.

14 THE COURT: Admitted.

15 (Exhibit No. 68 admitted.)

16 MS. CONNELLY: If we can publish, Your Honor.

17 Q Whose phone number was this phone number?

18 A Mr. Shibley's phone number.

19 Q How can you tell that?

20 A The billing information. It says ES1 LLC, and the address is
21 Mr. Shibley's address.

22 Q Thank you.

23 And now I will take that down. If we could show the witness
24 Government's Exhibit 69. Where did this record come from?

25 A This record was provided by Comcast.

1 Q And is this a record for one of the phone numbers that you
2 collected?

3 A Correct.

4 Q Whose, or what phone number is this?

5 A It's -- the subscriber is Shibley Medical.

6 Q What phone number is it?

7 A I'm sorry, it's 206-938-4291.

8 MS. CONNELLY: If we could move into evidence as a
9 business record Government's Exhibit 69.

10 MR. NANCE: No objection.

11 THE COURT: Admitted.

12 (Exhibit No. 69 admitted.)

13 MS. CONNELLY: Permission to publish, Your Honor.

14 Q And so whose number was this number?

15 A The subscriber is Shibley Medical.

16 Q So is that Eric Shibley's phone number?

17 A Correct. And his address.

18 Q Okay. I will take that down.

19 As part of your investigation, did you also collect and
20 review IP address information related to the defendant?

21 A Yes.

22 Q What is an IP address?

23 A An IP address is an address that identifies a device on an
24 internet. The address is assigned to the device by the
25 internet-service provider.

1 Q So I'm showing you Government's Exhibit 62. What is this
2 document?

3 A Records provided by Comcast.

4 Q Are they IP address records from Comcast?

5 A Correct.

6 MS. CONNELLY: And so at this time, I would move
7 Government's Exhibit 62 in as a business record.

8 MR. NANCE: No objection.

9 THE COURT: Admitted.

10 (Exhibit No. 62 admitted.)

11 MS. CONNELLY: Permission to publish, Your Honor.

12 Q So looking at this letter, the bold bulleted points in the
13 middle. Are those the IP addresses that you sought subscriber
14 information for?

15 A Yes.

16 Q And who was the subscriber for these two IP addresses?

17 A Shibley Medical.

18 Q What was the subscriber's address?

19 A It's 4700 36th Avenue Southwest, Seattle, Washington.

20 Q Is that Mr. Shibley's address?

21 A Correct.

22 Q Is that within Washington State?

23 A Yes.

24 Q I will take that down.

25 As part of your investigation, did you also collect and

1 review e-mail subscriber records?

2 A Yes, we did.

3 Q And have you reviewed Government's Exhibits 63 through 67
4 before your testimony today?

5 A Yes.

6 Q Are those the e-mail subscriber records that you collected?

7 A Correct.

8 Q What do those exhibits show?

9 A They showed Mr. Shibley's e-mail addresses.

10 MS. CONNELLY: Okay. At this time, I would move in
11 Government's Exhibit 63 through 67 as business records.

12 MR. NANCE: No objection.

13 THE COURT: Admitted.

14 (Exhibit Nos. 63 - 67 admitted.)

15 Q And so again, what are Government's Exhibits 63 through 67?

16 A They're records we obtained from internet service providers
17 for e-mail addresses belonging to Mr. Shibley.

18 Q And did Mr. Shibley have five e-mail addresses that he
19 controlled?

20 A Correct.

21 Q So now we're going to start talking about the PPP and EIDL
22 applications that were submitted in this case.

23 Have you reviewed Government's Exhibits 1 through 26 before
24 your testimony today?

25 A Yes.

1 Q And what are they?

2 A Those are the PPP applications, and the supporting documents
3 for those applications.

4 MS. CONNELLY: At this time, I would move in
5 Government's Exhibits 1 through 26 as business records.

6 MR. NANCE: No objection.

7 THE COURT: Admitted.

8 (Exhibit Nos. 1 - 26 admitted.)

9 MS. CONNELLY: And, Your Honor, may I publish them now
10 that they're admitted?

11 Q So I'm going to show the court and the witness and the jury
12 what's been marked -- or, actually, I apologize. I'm going to
13 show the witness what's been marked as Government's Exhibit 205.

14 Do you recognize this document?

15 A Yes.

16 Q What is it?

17 A It's a summary of all of Mr. Shibley's PPP applications.

18 Q And how many pages is the document of Government's
19 Exhibit 205?

20 A It's two pages.

21 Q Can we scroll through it for the witness?

22 Do you remember reviewing Government's Exhibit 205?

23 A Yes.

24 Q Do you remember how many pages it contains?

25 A I'm sorry, I don't recall the total number of pages. But

1 it's a little more than two.

2 Q Okay. Did you assist in the preparation of Government's
3 Exhibit 205?

4 A Yes.

5 Q And how did you assist in the preparation of Government's
6 Exhibit 205?

7 A I reviewed and confirmed all of the information that's
8 included in the exhibit.

9 Q And what exhibits are Government's Exhibit 205 based off of?

10 A The PPP applications.

11 Q Are they based on other applications as well?

12 A The EIDL applications as well.

13 Q Have you reviewed Government's Exhibits 1 through 39 as part
14 of your investigation?

15 A Yes.

16 Q And so is the information found in Government's Exhibit 205
17 accurate?

18 A Yes.

19 Q Does Government's Exhibit 205 fairly and accurately summarize
20 the documents in Government's Exhibits 1 through 39?

21 A Yes.

22 MS. CONNELLY: At this time, I would move to admit
23 Government's Exhibit 205, pursuant to Rule 1006.

24 MR. NANCE: Yeah. Unless the summary contains
25 duplications, if the witness could clarify that, whether there's

1 anything duplicative about the summary.

2 MS. CONNELLY: Of what?

3 THE COURT: Counsel, address your comments to me.

4 MS. CONNELLY: Yes. I apologize.

5 THE COURT: Do you understand what he's asking?

6 MS. CONNELLY: Well, some of the applications themselves
7 were duplicative. The information was similar, on separate
8 applications. Is that the question?

9 MR. NANCE: Well, I'm concerned that the summary might
10 overstate the number of applications.

11 MS. CONNELLY: No, it does not.

12 MR. NANCE: Okay. Thank you.

13 THE COURT: It will be admitted.

14 (Exhibit No. 205 admitted.)

15 MS. CONNELLY: Your Honor, may we move to publish?

16 THE COURT: Yes.

17 Q So we're looking at Slide 1 of Government's Exhibit 205.
18 What is this chart?

19 A This chart is a summary of the PPP applications, by entity.

20 Q And how many pages is it?

21 A It's two pages.

22 Q Can you walk us through the information that's represented on
23 this slide?

24 And, Mr. Arnold, if we could just blow up the top part.

25 Thank you.

1 A It shows the lender, the entity that applied for the PPP
2 loan, the EIN number, the manager, the monthly payroll that was
3 listed, the loan amount that was applied for, the number of
4 employees that was listed, the answer to question No. 5, the
5 application date, and the grand jury exhibit number.

6 Q By grand jury exhibit number, do you mean government's
7 exhibit number?

8 A Yes.

9 Q And just so -- remind the jury what is Question 5 on the PPP
10 application?

11 A Question 5 asked, among other things, whether the applicant
12 was on probation or parole.

13 Q Where did the information on this chart come from?

14 A It came from the PPP applications themselves.

15 Q So if we could zoom back out, Mr. Arnold.

16 How is this chart organized?

17 A This chart is organized by entity.

18 Q And what do the rows in bold red text signify?

19 A Those are the counts that were charged in indictment.

20 Q And who is the manager that's listed on every single PPP
21 application?

22 A Eric Shibley.

23 Q So we're going to turn back from Government's Exhibit 205 and
24 take some time to focus on certain of these loans, and look at
25 the underlying documents. If that's okay, Special Agent Moran,

1 let's focus on line 1 of this chart.

2 What loan is this for?

3 A This is for a loan in the name of A Team Holdings LLC.

4 Q During your investigation -- and who was the loan submitted
5 to?

6 A ReadyCap Customer's Bank.

7 Q During your investigation, did you learn that Ready Capital
8 and Customer's Bank had a relationship with respect to the PPP?

9 A Yes.

10 Q And what was it?

11 A Ready Capital accepted and processed the PPP applications.

12 And then at some point Customer's Bank took over the actual
13 funding of the loans.

14 Q And so who was the manager listed on this application?

15 A Eric Shibley.

16 Q What was the average monthly payroll listed?

17 A \$384,000.

18 Q And what was the loan request?

19 A For \$960,000.

20 Q How many employees did he claim on the A Team Holdings?

21 A Forty-eight.

22 Q And what was the date of this application?

23 A It was April 12th, 2020.

24 Q And what exhibit is the paperwork for the loan found at?

25 A No. 1.

1 Q And so if we could turn to Government's Exhibit 1, which has
2 already been entered into evidence. What is Government's
3 Exhibit 1?

4 A This is the application form for A Team Holdings LLC.

5 Q And if we could look at certain portions, what starts on
6 page 1 of Government's Exhibit 1?

7 A This is the actual application page.

8 Q And at some point did Dr. Shibley send an updated version of
9 this application to Ready Capital?

10 A Yes.

11 Q And if we could turn to page 9 of Government's Exhibit 1.
12 What starts on page 9 of Government's Exhibit 1?

13 A This is the 941 that Mr. Shibley submitted, along with the
14 application.

15 Q And just generally speaking, what are 941s?

16 A They're quarterly forms that the employer files with the IRS
17 that reports wages and payroll taxes.

18 Q And so why would a business submit them?

19 A To report to the IRS what they had paid in wages and the
20 payroll taxes.

21 Q And how often are they filed?

22 A On a quarterly basis.

23 Q So does that mean they're filed four times a year?

24 A Correct.

25 Q And so if we could look at the top part of this 941, I know

1 it's small, what quarter is this 941 for?

2 A This is the fourth quarter of 2019.

3 Q And looking at line 1, how many employees did the 941 claim
4 that A Team Holdings had?

5 A Forty-eight.

6 Q And on line 2, how much in wages did it claim to pay those
7 employees?

8 A \$975,000.

9 Q And how much federal income tax was withheld on those wages,
10 according to the 941, on line 3?

11 A Zero dollars.

12 Q And at lines 5A through 5D, towards the bottom. What does
13 that represent?

14 A It shows the taxable social security and Medicare that's
15 withheld and what the employer contributes.

16 Q Are federal income taxes and the social security and Medicare
17 taxes different?

18 A Yes.

19 Q If we could pull back out, Mr. Arnold.

20 Looking at line 14. What is the balance due?

21 A \$149,175.

22 Q And what does a balance on a 941 represent?

23 A It represents what the business owes the IRS.

24 Q Turning to the second page of the 941, if we could look at
25 part two, Mr. Arnold, at the top.

1 What is part two on a 941 about?

2 A This shows whether the business is a monthly depositor or a
3 semiweekly depositor.

4 Q What does it mean to a monthly versus a semiweekly depositor?

5 A It's how often the business deposits what they owe with the
6 IRS, whether it's monthly or semiweekly.

7 Q Do businesses pay taxes as they go along?

8 A Correct.

9 Q And what does Mr. Shibley claim to be on this 941?

10 A He claims to be a monthly depositor.

11 Q Okay. And moving to page 12 of this exhibit. What is this
12 document?

13 We can zoom in on the top part.

14 A This is a 941 for A Team Holdings, for the first quarter of
15 2020.

16 Q And was this also submitted to Ready Capital as part of the A
17 Team Holdings loan?

18 A Yes.

19 Q And how much in wages for the first quarter of 2020 is the
20 company claiming? Yeah, if we could. Thank you, Mr. Arnold.

21 A \$768,000.

22 Q And so in Government's Exhibit 1, are there other documents
23 in Government's Exhibit 1 that Mr. Shibley submitted as
24 supporting documentation?

25 A Yes.

1 Q What sorts of things did he submit?

2 A He submitted Secretary of State records, copy of his driver's
3 license, a copy of a voided check, sometimes W-3s. I'm not sure
4 if it's in this exhibit or not.

5 Q So is that the type of supporting documentation that's found
6 with most of the loan applications in Government's Exhibits 1
7 through 26?

8 A Yes.

9 Q Turning to page 31 of Government's Exhibit 1. What is this
10 document?

11 A This is the loan note.

12 Q And who was it with?

13 A A Team Holdings LLC.

14 Q Who is the lender?

15 A ReadyCap Lending.

16 Q And so can you just explain for the jury, what is a loan
17 note?

18 A It lays out the terms of the loan. And it's the borrower's
19 promise to repay, as well. And it's signed by the borrower.

20 Q And what is the date of this loan note?

21 A April 23rd, 2020.

22 Q And how much was the loan for?

23 A \$960,000.

24 Q And was that the amount that was applied for?

25 A Correct.

1 Q Looking at page 3 of the loan note, which is page 33 of
2 Government's Exhibit 1. If we could look at these certifications
3 under paragraph 11. What are these?

4 A These are items that -- or things that the borrower certifies
5 or agrees are true and correct when they sign the note.

6 Q So what sorts of things was Mr. Shibley certifying to?

7 A That the information -- what the proceeds of the loan are
8 going to be used for, what they aren't going to be used for, that
9 they will correct any errors.

10 Q Was he also certifying that everything in the application
11 form was true and accurate and remained true and accurate?

12 A Yes.

13 Q Turning to page 4 of the loan note. Did Mr. Shibley sign
14 this loan note?

15 A Yes.

16 Q And if we could come back out, Mr. Arnold.

17 And looking at the DocuSign envelope ID that's in corner,
18 what is the DocuSign ID?

19 A It's a unique identifier for the digital signature.

20 Q Okay. And looking at page 37 of this exhibit, what is this
21 document?

22 A This is the DocuSign document that records the digital
23 signature for which the note was signed.

24 Q And how can you tell when a DocuSign certificate relates to a
25 document?

1 A The identifier that is at the top of the document, is also on
2 the certificate of completion here.

3 Q And where is it on this the certificate of completion, if you
4 can just --

5 A It's at the top of the envelope ID.

6 Q And does this envelope ID match the envelope ID we saw on the
7 loan note?

8 A Yes.

9 Q If we can come back out, Mr. Arnold, and look into the signer
10 events in the middle.

11 What does this section of the certificate tell you?

12 A This shows who signed the loan note.

13 Q And who signed the loan note in this case?

14 A Eric Shibley.

15 Q Is shibleymedical@outlook.com one of the e-mail addresses you
16 found was controlled by Mr. Shibley?

17 A Yes.

18 Q Does the IP address that you see here correspond with the IP
19 addresses of Mr. Shibley that we looked at earlier?

20 A Yes.

21 Q When was this signed?

22 A April 23rd, 2020.

23 Q Turning to page 41 of the exhibit, if we could. What is this
24 document?

25 A This is a loan note between A Team Holdings and Customer's

1 Bank.

2 Q So why was there a second loan note for this loan?

3 A As I mentioned earlier, Customer's Bank took over the funding
4 of the PPP application to Ready Capital. So they required a
5 second note with them.

6 Q And so when was the date of this loan note?

7 A April 30th, 2020.

8 Q And, again, how much was the loan for?

9 A \$960,000.

10 Q Was that the same as the ReadyCap loan note?

11 A Correct.

12 Q It was the same amount as the loan applied for?

13 A Correct.

14 Q Does it have the same SBA loan number?

15 A Yes.

16 Q And is that how you can tell they're related loan notes?

17 A Yes.

18 Q And looking at page 3 of the Customer's Bank loan note, and
19 looking at paragraph 11, does this loan note also contain
20 certifications?

21 A Yes.

22 Q And are they the same certifications as for the ReadyCap loan
23 note?

24 A Yes.

25 Q Turning to page 4 of the loan note. Did Mr. Shibley also

1 sign the Customer's Bank loan note?

2 A Yes.

3 Q And moving on to page 45 of the exhibit. What is this
4 document?

5 A This is the DocuSign document that recorded the digital
6 signature for that loan note.

7 Q And looking at the signer events. What does this tell you?

8 A That Eric Shibley signed this loan note.

9 Q When was it signed?

10 A April 30th, 2020.

11 Q Okay. We can come back out. I'm going to publish.

12 Was this loan funded?

13 A Yes.

14 Q I'm going to show the witness Government's Exhibit 104, if we
15 can. What is this document?

16 A This is a bank account statement for the A Team Holdings LLC
17 from Wells Fargo.

18 MS. CONNELLY: And so at this time, I would move in
19 Government's Exhibit 104 as a business record.

20 MR. NANCE: No objection.

21 THE COURT: Admitted.

22 (Exhibit No. 104 admitted.)

23 MS. CONNELLY: May I publish, Your Honor?

24 THE COURT: Yes.

25 Q If we could turn to the next page of Government's

1 Exhibit 104, Mr. Arnold, and look in this table.

2 Can you tell, from this bank statement, what date the
3 Customer's Bank loan was funded?

4 A It was funded May 4th, 2020.

5 Q And where is that on this? Is that the third line on this?

6 A The third line down, correct.

7 Q And how much was sent to Mr. Shibley's A Team Holdings
8 account?

9 A \$960,000.

10 Q And what happened to the money after this?

11 A It was transferred to another account.

12 Q I am going to unpublish. And if we could show the witness
13 Government's Exhibit 105.

14 What is this?

15 A This is a savings bank account statement from Wells Fargo for
16 the A Team Holdings LLC.

17 Q Is this the bank account that the \$960,000 was transferred
18 into?

19 A Correct.

20 MS. CONNELLY: I would move to admit Government's
21 Exhibit 105 as a business record.

22 MR. NANCE: No objection.

23 THE COURT: Admitted.

24 (Exhibit No. 105 admitted.)

25 MS. CONNELLY: May I publish, Your Honor?

1 THE COURT: Yes.

2 Q If we could turn to page 2 of Government's Exhibit 105, and
3 look at the transactions table.

4 What date was the \$960,000 moved into this account?

5 A May 4th, 2020.

6 Q And did Mr. Shibley use any of the funds, after he
7 transferred the money?

8 A Yes. He withdrew \$150,000 in cash.

9 Q And what date did he do that?

10 A On May 26th, 2020.

11 Q And looking at the May 27th line. What happened to the rest
12 of the money?

13 A We seized the remaining funds.

14 Q And how did you seize the remaining funds?

15 A With a seizure warrant.

16 Q If we could turn back to Government's Exhibit 205, the
17 summary chart that we started with. If we would move to page 2
18 of the summary chart, and look at line 19 of the chart.

19 What loan is this?

20 A This is an application by Seattle's Finest Cannabis LLC.

21 Q And who did the application go to?

22 A To TCF.

23 Q And, again, who was the manager?

24 A Eric Shibley.

25 Q And what was the average monthly payroll listed?

1 A \$40,000.

2 Q And what was the loan amount requested?

3 A \$100,000.

4 Q And how many employees did he claim?

5 A Six.

6 Q And what was the answer for Question No. 5?

7 A It was, "No."

8 Q What was the date of this application?

9 A April 25th, 2020.

10 Q And what exhibit is the paperwork for the loan found at?

11 A Exhibit 2.

12 Q And if we could pull up Government's Exhibit 2, which has
13 already been offered into evidence.

14 THE COURT: Let's take a moment and let the jury stand
15 up and stretch.

16 MS. CONNELLY: Okay.

17 THE COURT: All right. That was as much for me as it
18 was for you.

19 Q And so if we could pull up Government's Exhibit 2. What is
20 contained in Government's Exhibit 2?

21 A This is the loan application and the supporting documents.

22 Q For the Seattle's Finest Cannabis loan?

23 A Correct.

24 Q And so what's on page 1 of this exhibit?

25 A This is the application form.

1 Q And does that contain all the same information we just went
2 over in the summary chart?

3 A Correct.

4 Q Turning to page 3 of the application. Did Mr. Shibley sign
5 this application?

6 A Yes.

7 Q And what is the date that he signed the application?

8 A April 25th, 2020.

9 Q And looking at page 6 of this exhibit. What is found here?

10 A This is the 941 that Mr. Shibley submitted with the
11 application.

12 Q If we could turn to the last page of this exhibit, which is
13 page 30. What is this document?

14 A This is a letter from TCF Bank, denying the loan application.

15 Q And what's the date that this loan application for Seattle's
16 Finest Cannabis was denied?

17 A May 4th, 2020.

18 Q And what does that mean?

19 A It means the loan was not funded.

20 Q And just looking at the top two logos, do you know why TCF
21 Bank and Chemical Bank are listed at the top?

22 A Chemical Bank is a division of TCF Bank.

23 Q And so turning back to the summary chart, at Government's
24 Exhibit 205, if we could look at line 3 of this chart.

25 What loan does this represent?

1 A This is an application to Ready Capital, Customer's Bank, by
2 Dituri Construction LLC.

3 Q And what was the average monthly payroll that was listed?

4 A \$392,000.

5 Q And what was the loan amount requested?

6 A \$980,000.

7 Q And how many employees did he claim on this loan?

8 A Forty-nine.

9 Q And what was the answer for Question No. 5?

10 A It was, "No."

11 Q What was the date of the application?

12 A May 2nd, 2020.

13 Q And what exhibit is the paperwork for this loan found at?

14 A Exhibit 3.

15 Q If we could look at Government's Exhibit 3, please.

16 If we could start at page 1. What's on page 1 of this
17 exhibit?

18 A This is the application form.

19 Q And looking at page 2 of this exhibit, if we could zoom in on
20 the bottom portion, Mr. Arnold. Did Mr. Shibley sign this
21 exhibit, or sign this application?

22 A Yes, he did.

23 Q And looking at page 5 of the exhibit. What is this?

24 A This is the DocuSign document that records the digital
25 signature.

1 Q And if we could just look at the signer events, quickly.
2 What does this show?

3 A This shows that Mr. Shibley was the one who signed it.

4 Q And was shibley98126@gmail.com one of the e-mail addresses
5 that you found was associated with Mr. Shibley?

6 A Yes.

7 Q Was this IP address one of his e-mail addresses?

8 A Yes.

9 Q And what is the date that this document was DocuSigned?

10 A May 2nd, 2020.

11 Q If we could turn to page 10 of the exhibit. What's found at
12 -- what is this document?

13 A This is the Form 941 for Dituri Construction that was
14 submitted with the application.

15 Q And if we could move back to the summary chart at
16 Government's Exhibit 205, and focus on line 2. What loan does
17 this represent?

18 A This is a loan application from Dituri Construction LLC to
19 Celtic Bank.

20 Q And what was the average monthly payroll listed on this
21 Dituri Construction application?

22 A \$225,400.

23 Q And what was the loan request?

24 A \$563,500.

25 Q And how many employees did he claim?

1 A Forty-nine.

2 Q And what was the answer for Question 5?

3 A It was, "No."

4 Q And what was the date of this application?

5 A April 30th, 2020.

6 Q And if we could just briefly, Mr. Arnold, zoom in on both
7 lines two and three of Government's Exhibit 205.

8 Do lines two and three both represent loans submitted by Mr.
9 Shibley for Dituri Construction?

10 A Yes.

11 Q And how do they compare?

12 A The monthly payroll amount is different.

13 Q How much is it different by?

14 A Over \$100,000, at least.

15 Q And how long passed between these two explanations being
16 submitted?

17 A It was a couple of days.

18 Q And so turning back to focus on the Celtic Bank Dituri
19 Construction loan, found at line 3, what exhibit is the paperwork
20 for the loan found at?

21 A Exhibit 4.

22 Q And so I'm going to show you what's already been entered into
23 evidence as Government's Exhibit 4. And what is on page 1 of
24 this exhibit?

25 A This is the application form, for Dituri Construction LLC.

1 Q And does it have all the same information that was on the
2 summary chart?

3 A Yes.

4 Q And if we could turn to page 3 of this application, did Mr.
5 Shibley sign the application?

6 A Yes.

7 Q And turning to page 17 of the exhibit, what is found here?

8 A This is the 941 for Dituri Construction that was submitted
9 with the application.

10 Q And what quarter is it for?

11 A The first quarter of 2020.

12 Q Do you remember that we just looked at a 941 submitted with
13 the Ready Capital application?

14 A Yes.

15 Q Do the 941s match?

16 A No.

17 Q If we could publish both Government's Exhibit 3, page 10, and
18 Government's Exhibit 4, page 10, or page 17, simultaneously, the
19 two 941s.

20 If we could look at the top portions of both of them, Mr.
21 Arnold, if that's possible.

22 So are these purportedly for the same time period?

23 A Yes, they're both for the first quarter of 2020.

24 Q And are they for the same company?

25 A Yes.

1 Q Do the companies have the same employer identification
2 number?

3 A Yes.

4 Q What's different about them?

5 A The amount of wages is different.

6 Q Have they been cut in half?

7 A Yes.

8 Q And, again, are these both supposed to be the 941s submitted
9 to the IRS for Dituri Construction in the first quarter of 2020?

10 A Yes.

11 Q So if we could just turn back to Government's Exhibit 4 and
12 the Dituri Construction loan submitted to Celtic Bank, Mr.
13 Arnold, and in particular turning to page 6 of this exhibit.
14 What is this document?

15 A This is the loan note for the loan with Dituri Construction
16 LLC.

17 Q And what's the date of this loan note?

18 A May 4th, 2020.

19 Q Who's the lender on this loan note?

20 A Celtic Bank.

21 Q And how much is the loan for?

22 A \$563,500.

23 Q And if we could look at page 5 of the loan note, which is
24 page 10 of the exhibit. If we could look at the zoomed text or
25 the bolded text through the signature, please, Mr. Arnold.

1 Did Mr. Shibley sign this note?

2 A Yes, he did.

3 Q And does this certify that the information provided to get
4 the loan was accurate?

5 A Yes.

6 Q And where is that statement on the --

7 A Right above the signatures. "By signing, the borrower agrees
8 that all the information provided in this application, and all
9 supporting documents and forms to obtain the loan, are true and
10 accurate in all material respects, and that any known false
11 statements are punishable by fine, imprisonment, or both."

12 Q And looking at page 11 of Government's Exhibit 4. What is
13 this document?

14 A This is the DocuSign record that recorded the digital
15 signature for the note and the application.

16 Q And looking at the signer events, if we can. Did Eric
17 Shibley also sign this note?

18 A Yes, he did.

19 Q And how can you tell?

20 A It has his e-mail address and IP address.

21 Q What was the date that the application and the loan note
22 package were DocuSigned and submitted to Celtic Bank?

23 A May 4th, 2020.

24 Q And was this loan funded?

25 A Yes.

1 Q I am going to unpublish.

2 I'm showing the witness what's been marked as Government's
3 Exhibit 106. What is this document?

4 A This is a bank statement from BECU for Ditur Construction
5 LLC.

6 MS. CONNELLY: And at this time, I would move in
7 Government's Exhibit 106 as a business record.

8 MR. NANCE: No objection.

9 THE COURT: It's admitted.

10 (Exhibit No. 106 admitted.)

11 MS. CONNELLY: Permission to publish, Your Honor.

12 Q If we could look at the bottom portion, Mr. Arnold.

13 What was the date that this loan was funded?

14 A May 6th, 2020.

15 Q And what did Mr. Shibley do with those funds?

16 A He transferred them from the checking account to the savings
17 account.

18 Q What date did he do that?

19 A May 7th, 2020.

20 Q And what eventually happened to the money, after Mr.
21 Shibley's transfers?

22 A It was returned to Celtic Bank.

23 Q Turning back to Government's Exhibit 205, the summary chart.
24 If we could look at the second page, and look at line 23. What
25 loan does this represent?

1 A This is a loan from -- to Harvest Bank from SS1 LLC.

2 Q And what was the average monthly payroll listed on this loan?

3 A \$328,000.

4 Q And what was the loan request?

5 A \$820,000.

6 Q And how many employees did he claim?

7 A Forty-one.

8 Q What was the answer for Question 5 on the Harvest loan?

9 A It was, "No."

10 Q What was the date of this application?

11 A April 20th, 2020.

12 Q What exhibit is the paperwork for the loan found at?

13 A Five.

14 Q And if we could show Government's Exhibit 5, which has
15 already been entered into evidence, what's on page 1 of
16 Government's Exhibit 5?

17 A This is the application form for SS1 LLC.

18 Q And turning to page 2 of the application, if we could look at
19 the signature, is the application signed?

20 A Yes. By Eric Shibley.

21 Q And if we could look at page 5 of the exhibit, what's found
22 at page 5 of Government's Exhibit 5?

23 A This is the 941 for SS1 LLC for the first quarter of 2020,
24 and it was submitted with the application.

25 Q Turning to page 7 of the exhibit, what is this document?

1 A This is a W-3 form that was submitted with the application.

2 Q Can you just explain, at a high level, what a W-3 is?

3 A It summarizes all of the W-2 information, the wages paid to
4 employees, and it's submitted by the employer by an annual basis
5 to Social Security Administration.

6 Q If we could turn to page 25 of Government's Exhibit 5.

7 Great. What is this document?

8 A This is the loan note between SS1 LLC and Harvest Small
9 Business Finance.

10 Q What was the date of this loan note?

11 A May 4th, 2020.

12 Q Who's the lender on the note?

13 A Harvest Small Business Finance.

14 Q And how much was the loan for?

15 A \$820,000.

16 Q Was that the amount that was applied for?

17 A Yes.

18 Q If we could just turn to page 7 of the loan note, Mr. Arnold.
19 Apologies, page 32 of the exhibit. Thank you, Mr. Arnold.

20 If we could look at paragraph 12 and zoom in on that. Did
21 the loan note contain certifications?

22 A Yes.

23 Q What are those certifications?

24 A These are things that the borrower represents are true and
25 accurate, when they sign the note.

1 Q And so in this case, did he represent that he was in
2 operation on February 15th, and had employees for whom he paid
3 salaries and payroll taxes?

4 A Correct.

5 Q Looking at page 9 of the loan note, which is page 34 of the
6 exhibit. Did Mr. Shibley sign this loan note?

7 A Yes, he did.

8 Q I'm going to unpublish.

9 If we could show the witness Government's Exhibit 46.

10 How is the loan note transmitted to Harvest?

11 A By e-mail from Mr. Shibley.

12 Q And what is Government's Exhibit 46?

13 A It's the e-mail exchange with Harvest, attaching the loan
14 note.

15 MS. CONNELLY: At this time, I would move Government's
16 Exhibit 46 into evidence, pursuant to 902(11), 803(6) and
17 881(d)(2).

18 MR. NANCE: I'm sorry, what is the connection, if I
19 could ask? I mean, I think there's a foundation problem.
20 Objection, foundation.

21 THE COURT: Lay additional foundation.

22 MS. CONNELLY: Okay.

23 Q Did Harvest provide business records, as part of your
24 investigation?

25 A Yes.

1 Q Was one of those business records provided in Government's
2 Exhibit 46?

3 A Yes.

4 Q Did Harvest provide a business records certification, along
5 with Government's Exhibit 46?

6 A Yes.

7 Q And does Government's Exhibit 46 contain an attachment?

8 A Yes.

9 Q If we could turn to page 2 of Government's Exhibit 46, and
10 show the witness the attachment. What was attached to
11 Government's Exhibit 46?

12 A It's the signed loan note.

13 Q Was it the same signed loan note that we saw in Government's
14 Exhibit 5?

15 A Yes.

16 MS. CONNELLY: Move to admit.

17 THE COURT: Have you supplied the certification to
18 counsel?

19 MS. CONNELLY: Yes, Your Honor.

20 THE COURT: Any objection, Mr. Nance?

21 MR. NANCE: No, Your Honor.

22 THE COURT: It will be admitted.

23 (Exhibit No. 46 admitted.)

24 Q If we could turn back to page 1 of the e-mail.

25 MS. CONNELLY: Permission to publish, Your Honor.

1 THE COURT: Yes.

2 Q What is the date of this e-mail?

3 A It's May 5th, 2020.

4 Q And, again, what was attached to this e-mail?

5 A The signed loan note.

6 Q Was it the same loan note that we looked at in Government's
7 Exhibit 5?

8 A Yes.

9 Q And who sent this e-mail?

10 A The e-mail address is Shibley Medical, and it's one of
11 Mr. Shibley's e-mail addresses.

12 Q And was this phone -- or, was this loan funded?

13 A Yes.

14 Q If we can unpublish.

15 I'm showing the witness what's been marked as Government's
16 Exhibit 107, please. What is this document?

17 A This is a bank statement from BECU, for a bank account in the
18 name of SS1 LLC.

19 MS. CONNELLY: At this time, I would move in
20 Government's Exhibit 107 as a business record.

21 MR. NANCE: No objection.

22 THE COURT: Admitted.

23 (Exhibit No. 107 admitted.)

24 MS. CONNELLY: Permission to publish, Your Honor.

25 Q If we could look at the bottom-portion tables, please. What

1 was the date that this loan was funded?

2 A May 19th, 2020.

3 Q And what was the amount that the loan was funded?

4 A \$820,000.

5 Q And what did Mr. Shibley do with these funds?

6 A He transferred it from the checking account, to the savings
7 account.

8 Q What is the date that he transferred the money?

9 A May 19th, 2020.

10 Q And what happened to the money after these transfers?

11 A It was returned to Harvest.

12 Q Did Mr. Shibley communicate with Harvest, after the money was
13 returned to Harvest?

14 A Yes.

15 Q We can unpublish and take that down.

16 Showing the witness what's been marked as Government's
17 Exhibit 47. What is Government's Exhibit 47?

18 A These are e-mails exchanged between Harvest and Mr. Shibley.

19 Q And was this e-mail provided by Harvest, during your
20 investigation?

21 A Yes.

22 MS. CONNELLY: I'd move Government's Exhibit 47 into
23 evidence. Again, as a business record.

24 MR. NANCE: Hearsay, Your Honor. Just because it's a
25 business record, it's still someone else, someone else sending an

1 e-mail.

2 THE COURT: Overruled. It will be admitted.

3 (Exhibit No. 47 admitted.)

4 MS. CONNELLY: Thank you, Your Honor. May I publish?

5 THE COURT: Yes.

6 Q If we could look at page 2 of this thread, to start. And if
7 we could look at the top portion, Mr. Arnold.

8 What is the date of this portion of the thread?

9 A May 27th, 2020.

10 Q And what is Mr. Shibley stating has happened?

11 A He is talking about the money being returned to Harvest.
12 He's asking them to send it to another bank instead.

13 Q Is shibleymedical@outlook.com one of Mr. Shibley's e-mail
14 addresses that you found?

15 A Yes.

16 Q If we would move back to page 1, Mr. Arnold. And if we could
17 look at the top portion of this thread.

18 What does Mr. Shibley tell the Harvest representative?

19 A He provides a cell phone number. And then he says they
20 started a federal case. And he provides a number. It says,
21 "That's crazy. I am dumbfounded."

22 Q What was the date of this e-mail?

23 A May 27th, 2020.

24 Q Was that the day that you seized PPP money in Dr. Shibley's
25 accounts?

1 A Yes.

2 Q Was 20SZ33, the number of your seizure case?

3 A Correct.

4 Q So with both the Celtic Bank and the Harvest loans that were
5 returned to the bank, did Mr. Shibley return that money himself?

6 A No.

7 Q Did the bank actually recall the money?

8 A Yes.

9 Q So if we could turn back to the summary exhibit found at
10 Government's Exhibit 205.

11 How many PPP loans were submitted by Mr. Shibley that are
12 found on this slide?

13 A There's 26.

14 Q And we have looked through Exhibits 1 through 5, and are not
15 going to look through all of the PPP loan documents that are the
16 basis for this slide, but have you reviewed Government's
17 Exhibits 6 through 26?

18 A Yes.

19 Q And can you just describe for the jury what is contained in
20 them?

21 A They contain the information that is summarized here in this
22 chart.

23 Q And do they all have paperwork supporting that information?

24 A Yes.

25 Q Do they all have a 941?

1 A I'm not sure if they all have the 941.

2 Q Is there a binder in front of you that contains those?

3 A Yes.

4 Q Do you want to look through that real quickly --

5 MS. CONNELLY: If that's okay, Your Honor.

6 A Yes, I see 941s for these applications in here.

7 Q Okay. And do all of the exhibits also contain a loan
8 application?

9 A Yes.

10 Q Do all of the exhibits contain a loan note or a declination
11 letter?

12 A No.

13 Q And why wouldn't -- why isn't that?

14 A Not all of the applications were processed to the point where
15 they received that.

16 Q If we could turn to Slide 3 of the summary chart. What is
17 found on Slide 3?

18 A These are the EIDL applications, by entity.

19 Q How many pages is it?

20 A It's one page.

21 Q And if you could just walk us through the information that's
22 represented on this slide.

23 A It shows the entity that applied for the EIDL loan, the EIN,
24 or social security number, the manager, the loan amount that was
25 approved, the advance amount, the number of employees, the gross

1 revenues, the application number, the application date, and the
2 exhibit number.

3 Q And why is there no lender listed on this chart?

4 A Because the lender is the Small Business Administration.

5 Q Why is there not a loan amount approved for every loan on
6 this chart?

7 A Because the SBA is the one that calculates the loan amount
8 approved.

9 Q Where did the information on this chart come from?

10 A The information came from the applications and supporting
11 documents.

12 Q And if we could zoom back out, Mr. Arnold.

13 What do the lines in bold red text signify?

14 A Those are the counts that were charged in the indictment.

15 Q If we could just briefly look at line one of this chart.
16 What application does this represent?

17 A An application in the name of Dituri Construction LLC.

18 Q And what was the date of this application?

19 A June 7th, 2020.

20 Q What exhibit is the paperwork for the loan found at?

21 A Twenty-seven.

22 Q If we could show what's already been entered into evidence as
23 Government's Exhibit 27.

24 Looking at page one of the exhibit. What is this?

25 A This is the application form.

1 Q And just looking at the top, what IP address was used to
2 submit this application?

3 A It's the IP address that starts with 2603.

4 Q Was that one of the IP addresses associated with Mr. Shibley?

5 A Correct.

6 Q And was this loan funded?

7 A Yes.

8 Q If we could look at page 27 of the exhibit. What is page 27
9 of the exhibit?

10 A This shows the loan being funded, the funds being sent to the
11 Dituri Construction bank account at Verity Credit Union.

12 Q Once it was funded, did Mr. Shibley try to withdraw money?

13 A Yes.

14 Q If we could turn back to the summary chart on the EIDL loans,
15 at page 3 of Government's Exhibit 205, please.

16 Looking at line 11 of this chart, what application does this
17 represent?

18 A This is an EIDL application in the name of SS1 LLC.

19 Q And what was the date of this application?

20 A June 7th, 2020.

21 Q And if we could just briefly look at both line 11 and line 1,
22 Mr. Arnold.

23 Looking at these together, how do they compare?

24 A The gross revenues are exactly the same. And they were
25 applied for on the same date.

1 Q Did they also receive the same loan amount?

2 A They received the same loan amount, yes.

3 Q Turning back to government's -- or line 11. What exhibit,
4 for the paperwork, is the paperwork for the SS1 loan found at?

5 A Exhibit 28.

6 Q If you could pull up what's already been entered into
7 evidence as Government's Exhibit 28, please.

8 What is page 1 of the Government's Exhibit 28?

9 A This is the loan application for SS1 LLC.

10 Q And just looking at the top portion, what IP address was used
11 to submit this application?

12 A The same IP address starting with 2603, that comes back to
13 Mr. Shibley.

14 Q And was this loan funded?

15 A Yes.

16 Q Looking at page 27 of Exhibit 28. What is this document?

17 A This document shows the funds being sent to a Verity Credit
18 Union account, in the name of SS1 LLC.

19 Q And once the loan was funded, did Mr. Shibley try to withdraw
20 money?

21 A Yes.

22 Q If we could turn back to Government's Exhibit 205 and look at
23 Slide 4 now, please.

24 What is shown on Slide 4 of Government's Exhibit 205?

25 A This shows the PPP and EIDL applications for Dituri

1 Construction LLC.

2 Q And how many pages is it?

3 A It's one page.

4 Q Can you walk us through the information that's represented on
5 this slide?

6 A At the top it shows the applications, the PPP applications.

7 And at the bottom are the EIDL applications.

8 Q Are there differences in the PPP loans that were submitted?

9 A Yes.

10 Q What are those differences?

11 A The loan amount applied for is different among the PPP loans,
12 and the monthly payroll amount is different.

13 Q And looking at the EIDL applications, what was the gross
14 revenues for each of these?

15 A One of them had gross revenues of \$850,000, and one had gross
16 revenues of zero.

17 Q If we could turn to Slide 5 of Government's Exhibit 205.
18 What is this chart?

19 A These are the PPP and EIDL applications for SS1 LLC.

20 Q And can you walk us through the information that's
21 represented on this slide?

22 A Again, at the top are the PPP applications for SS1 LLC, and
23 at the bottom are the EIDL applications.

24 Q And looking at the EIDL applications at the bottom, what are
25 the differences?

1 A The gross revenues are different between the two
2 applications.

3 Q And how far apart in time were these two applications
4 submitted?

5 A About a week apart.

6 Q Do the PPP and EIDL applications also contain some different
7 information?

8 A Yes.

9 Q What is the difference? Can you just explain for the jury,
10 what is the difference between monthly payroll and gross
11 revenues?

12 A The gross revenues are calculated from the -- it's the twelve
13 months' worth of revenues, prior to January 31st. And monthly
14 payroll is obviously what you are paying to your employees
15 monthly. So if you annualize that monthly payroll, you are
16 looking at about over \$3 million worth of payroll. And gross
17 revenues of \$850,000 would not be sufficient to cover payroll of
18 over \$3 million.

19 Q If we could turn to slide six of the summary chart. What is
20 this chart?

21 A These are the PPP and EIDL applications for Seattle's Finest
22 Cannabis LLC, SFC LLC.

23 Q Can you walk us through the information, again, that's
24 represented?

25 A At the top are the PPP applications, and at the bottom are

1 the EIDL applications.

2 Q And what changes with the PPP loans for Seattle's Finest
3 Cannabis and SFC LLC?

4 A The monthly payroll amount changes.

5 Q And what about the EIDL applications?

6 A The gross revenue changes.

7 Q How much does it change by?

8 A It's doubled from the first one to the second on. It more
9 than doubled.

10 Q And what about how many employees -- how do the employees
11 change between the PPP applications and the EIDL applications?

12 A The PPP applications are six employees. And then the EIDL
13 applications, there's either ten or twelve employees listed.

14 Q And just to remind us, how are EIDL advances calculated?

15 A It's a thousand dollars per employee, up to \$10,000.

16 Q So if you have more employees when you submit an EIDL
17 advance, would you get -- when you submit for an EIDL advance,
18 would you get more money on an EIDL advance?

19 A Yes.

20 Q If we could look at Slide 7 of the summary chart. What is
21 this chart?

22 A These are the PPP and EIDL applications for the A Team
23 Holdings LLC.

24 Q And can you walk us through the information that's
25 represented?

1 A At the top is the PPP application, and at the bottom is the
2 EIDL application.

3 Q And so does Dr. Shibley's EIDL application have the same
4 number of employees as his PPP application?

5 A No. On the PPP application, he lists 48 employees. And on
6 the EIDL, he lists four.

7 Q Which of these applications was filed first?

8 A The EIDL application was filed first.

9 Q And, again, can you just walk the jury through how his gross
10 revenue listed on the EIDL application compares with the monthly
11 payroll?

12 A So if you had a monthly payroll of \$384,000, again, you are
13 paying over \$4 million a year in payroll. A gross revenue of
14 \$180,000 for the that same year, would just not be sufficient to
15 make your payroll.

16 Q If we could turn to Slide 8 of the summary chart. What is
17 this chart?

18 A These are the PPP and EIDL applications for Eric R. Shibley
19 MD, PLLC.

20 Q On this chart, does Mr. Shibley's EIDL application list the
21 same number of employees as his PPP application?

22 A No. He lists four employees for his EIDL application, and on
23 his PPP, it's five or six employees.

24 Q And which application was submitted earliest?

25 A The EIDL application.

1 Q So did the employee numbers increase with time?

2 A Yes.

3 Q And how does his gross revenues listed on the EIDL
4 application compare with the monthly payroll?

5 A Again, you would not be able to make a monthly payroll of
6 that amount, with gross revenues that are listed there.

7 MR. NANCE: Objection. I think she's testifying
8 beyond -- she's speculating on this.

9 THE COURT: Overruled.

10 Q If we could turn to Slide 9 of the summary charts. What is
11 this chart?

12 A These are the PPP and EIDL applications for ES1 LLC.

13 Q And if we could look at the EIDL applications, in particular,
14 for ES1 LLC. And, Mr. Arnold, if we could maybe zoom in on
15 those.

16 How do the two EIDL applications compare?

17 A The amount listed for gross revenue is different. And the
18 number of employees is different.

19 Q How much is the difference in the gross revenues?

20 A It's more than doubled.

21 Q And just to remind the jury, was the time period for the
22 gross revenues the same throughout the EIDL application period?

23 A Yes. It's the twelve months prior to January 31st, 2020.

24 Q If we zoom back out, Mr. Arnold.

25 Do Mr. Shibley's EIDL applications list the same number of

1 employees as are in his PPP?

2 A No. In his EIDL, he lists four or 15 employees. In his PPP,
3 it's five or six employees.

4 Q If we could look at Slide 10 of the summary charts. What's
5 found on Slide 10?

6 A These are EIDL applications made in the name of Eric Shibley.

7 Q And I note it says "sole proprietorship" on the top. What
8 does it mean to have applied in the name of a sole
9 proprietorship?

10 A If you have a sole proprietorship, one difference is you
11 don't have to have an EIN number, you can use a social security
12 number.

13 Q What does this chart show?

14 A This chart shows the EIDL applications.

15 Q Okay. How many many employees did he claim that his sole
16 proprietorship had?

17 A Five employees.

18 Q And how much revenue did each claim to have?

19 A \$180,000.

20 Q If we can unpublish, please.

21 I'm showing the witness what's been marked as Government's
22 Exhibit 206. Do you recognize Government's Exhibit 206?

23 A Yes.

24 Q And what is it?

25 A It's a summary of all of the PPP loans, EIDL loans and

1 advances, that Mr. Shibley received.

2 Q How many pages is it?

3 A It's one page.

4 Q Did you assist in the preparation of Government's
5 Exhibit 206?

6 A Yes.

7 Q How did you do so?

8 A I confirmed and verified all of the information that's on
9 here.

10 Q And what types of exhibits is Government's Exhibit 206 based
11 on?

12 A It's based on the loan application documents and the bank
13 statement documents.

14 Q And have you reviewed the exhibits listed in the chart, as
15 part of your investigation?

16 A Yes.

17 Q Do they include bank records that were provided by various
18 financial institutions during your investigation?

19 A Yes.

20 Q Is the information found on the chart accurate?

21 A Yes.

22 Q And does Government's Exhibit 206 fairly and accurately
23 summarize the documents in the listed exhibits?

24 A Yes.

25 MS. CONNELLY: At this time, I would move to admit

1 Government's Exhibit 206. And I would also move into evidence
2 certain bank records that it's based off of. I can give a list.
3 That would be 117, 120, 130, 136, 143, 172, 178, 187, and 199,
4 pursuant to a business records certification.

5 THE COURT: Any objections, Mr. Nance?

6 MR. NANCE: No objection.

7 THE COURT: They will be admitted.

8 (Exhibit Nos. 117, 120, 130, 136,
9 143, 172, 178, 187, 199 and 206 admitted.)

10 MS. CONNELLY: Thank you.

11 Permission to publish Government's Exhibit 206.

12 THE COURT: Yes.

13 MS. CONNELLY: Thank you.

14 Q So what is the information that is summarized in Government's
15 Exhibit 206?

16 A This shows all of the PPP loans, EIDL loans and advances that
17 Mr. Shibley received.

18 Q So did you look at both the bank accounts and the loan
19 documents to confirm where loans were funded?

20 A Yes.

21 Q How many loans received some form of funding for Mr. Shibley?

22 A Twelve.

23 Q And how much total money did Mr. Shibley receive in PPP and
24 EIDL funds?

25 A Approximately \$2.8 million.

1 Q Is that seen at the bottom, on line 13?

2 A Yes.

3 Q I would like to briefly return to Government's Exhibit 47,
4 which has previously been entered into evidence and we were
5 looking at earlier.

6 What was the date that Mr. Shibley became aware of the
7 federal case referenced in his e-mail?

8 A May 27th, 2020.

9 Q And after that date, did Mr. Shibley take out any of the PPP
10 and EIDL funds that he received in cash?

11 A Yes.

12 Q If we could look at Government's Exhibit 130, which has
13 previously been admitted. And if we could look at page 80 of the
14 exhibit.

15 What is this document?

16 A This is a bank statement from Navy Federal Credit Union for
17 Eric R. Shibley MD, PLLC.

18 Q What period does this statement cover?

19 A It covers the month of May 2020.

20 Q If we could look at the next page of this statement, Mr.
21 Arnold, and if we could zoom in. Thank you.

22 Looking at the 5/12 deposit line, the first 5/12 deposit line
23 -- maybe if we could zoom in on that, Mr. Arnold. Great.

24 What is this?

25 A It shows the funds being deposited into the account from

1 Chemical Bank.

2 Q And what is Chemical Bank?

3 A It's one of the lenders, the PPP lenders.

4 Q Is it associated with TCF Bank?

5 A Correct.

6 Q And how much was funded?

7 A \$100,000.

8 Q If we could just look a couple -- if you could expand that,
9 Mr. Arnold, a couple of lines down.

10 What happens to the money?

11 A It gets transferred to another account.

12 Q And what date was it transferred to another account?

13 A Also on May 12th, 2020.

14 Q If we could turn to the next page of the May 2020 statement,
15 found at Government's Exhibit 130. If we could look in at the
16 bottom under "savings," please.

17 On 5/12, what happens in this account?

18 A This shows the account -- the funds being transferred into
19 this account.

20 Q And what happens after that with the money?

21 A Mr. Shibley withdrew \$50,000 on May 28th, 2020. And the
22 remaining \$49,500 was seized by the government on the 29th of
23 May.

24 Q And so as of May 28th, 2020, had Mr. Shibley become aware of
25 the seizure warrant?

1 A Yes.

2 Q And at that time, was the investigative team following
3 Mr. Shibley, as part of the investigation?

4 A Yes.

5 Q What did you observe Mr. Shibley doing?

6 A We observed Mr. Shibley traveling around to various banks to
7 try and withdraw cash. Also to try and get some further PPP
8 loans.

9 Q And did Mr. Shibley continue applying for PPP and EIDL funds,
10 after he became aware of the federal case?

11 A Yes.

12 Q I'm going to unpublish.

13 I'm showing the witness what's been marked Government's
14 Exhibit 211. And, actually, if we could show her Government's
15 Exhibits 211, 212 and 213.

16 What are Government's Exhibits 211, 212, and 213?

17 A These are certificates showing that the deposits at those
18 banks are insured by the FDIC.

19 Q Which banks are they for? We can scroll back through, again.

20 A Celtic Bank, Customer's Bank, and TCF National Bank.

21 Q Are Government's Exhibits 211 through 213 fair and accurate
22 replications of the FDIC deposit insurance certificates that you
23 obtained during your investigation?

24 A Yes.

25 MS. CONNELLY: I move to admit Government's Exhibits 211

1 through 213, pursuant to 902(2) and 803(8).

2 MR. NANCE: No objection.

3 THE COURT: Admitted.

4 (Exhibit Nos. 211 - 213 admitted.)

5 Q I'm showing you what's been admitted as Government's
6 Exhibit 211. We can publish.

7 What is this document?

8 A This document is a certificate showing that the deposits at
9 Celtic Bank are FDIC insured.

10 Q Does this mean they were insured in April and May of 2020?

11 A Yes.

12 Q I'm showing you Government's Exhibit 212, which has been
13 admitted. What is this document?

14 A The certificate showing that the deposits at Customer's Bank
15 are FDIC insured.

16 Q And, again, does that remain for April and May of 2020?

17 A Correct.

18 Q Finally, I'm showing you Government's Exhibit 213. What is
19 this document?

20 A This document is showing that the deposits at TCF National
21 Bank are FDIC insured.

22 Q And were they insured in April and May of 2020?

23 A Yes.

24 Q So we're now going to turn to a few e-mails that Mr. Shibley
25 sent to the lenders. I'm showing the witness Government's

1 Exhibit 50.

2 Do you recognize this document?

3 A Yes.

4 Q What is it?

5 A E-mails exchanged between Celtic Bank and Mr. Shibley.

6 Q And was this provided to you as a business record from Celtic
7 Bank during your investigation?

8 A Yes.

9 MS. CONNELLY: I would move to admit Government's
10 Exhibit 50.

11 MR. NANCE: No objection.

12 THE COURT: It's admitted.

13 (Exhibit No. 50 admitted.)

14 MS. CONNELLY: Permission to publish, Your Honor.

15 THE COURT: Yes.

16 Q And if we could, Mr. Arnold, if we could scroll between two
17 pages of this, to the e-mail starting on May 28th. What does
18 Mr. Shibley write to Celtic Bank on May 28th?

19 A He writes to the Celtic Bank employee that, "Your boss called
20 earlier and asked for five to ten names to verify that they were
21 working on-site."

22 Q Does he provide five to ten names?

23 A He provides seven names.

24 Q And what else did he provide about these seven individuals?

25 A He provided the last four digits of their social security

1 number, and a phone number for them.

2 Q And I note, as you have said, Mr. Shibley writes that the
3 Celtic Bank employee's boss called him earlier and asked for five
4 to ten names. What really happened to prompt Mr. Shibley's
5 e-mail?

6 A It was actually an undercover agent who called Mr. Shibley,
7 posing as a representative of the bank, and asked for that
8 information.

9 Q I'm going to unpublish.

10 I'm showing the witness Government's Exhibit 48. Do you
11 recognize this e-mail?

12 A Yes.

13 Q If we could look at page 2 -- or 3, I apologize. What is
14 this e-mail?

15 A This e-mail is an e-mail from Mr. Shibley to Harvest Small
16 Business.

17 MS. CONNELLY: I would introduce it also as a business
18 record.

19 THE COURT: You offer it?

20 MS. CONNELLY: Yes. I offer it.

21 MR. NANCE: No objection.

22 THE COURT: It will be admitted.

23 (Exhibit No. 48 admitted.)

24 THE COURT: Let's take a 15-minute recess.

25 THE CLERK: Please rise. Court is in recess.

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(Recessed.)

1 THE COURT: Ready for the jury?

2 MR. NANCE: Yes.

3 MS. CONNELLY: Yes, Your Honor. We have provided you
4 with stipulations that Agent Moran will likely get into. I don't
5 know if you want to handle them before we start back up, or just
6 let her handle them.

7 THE COURT: Any problem with me just reading them to the
8 jury?

9 MR. NANCE: No problem.

10 MS. CONNELLY: No problem.

11 THE COURT: Okay. Let's bring in the jury.

12 All right. Please be seated.

13 (The following occurred in the presence of the jury.)

14 THE COURT: Ladies and gentlemen, the parties have
15 entered into the following stipulations:

16 The United States of America and the defendant Eric Shibley
17 hereby stipulate and agree to the following facts:

18 One, on June 10, 2020, the defendant, Eric Shibley, was
19 served with subpoenas for documents, from a federal grand jury
20 sitting in the District of Columbia. The subpoenas requested
21 documents related to the business operations of ESI LLC, SS1 LLC,
22 the A Team Holdings LLC, Dituri Construction LLC, and Eric R.
23 Shibley MD, PLLC;

24 Second, working through his attorney, Eric Shibley provided
25 the following documents in response to the subpoena, via e-mail.

1 (A) Certificates of formation for ESI LLC, SS1 LLC, the A Team
2 Holdings LLC, and Eric R. Shibley MD, PLLC. Operating agreements
3 for -- and, counsel, I'm just going to enter these as a long list
4 of documents. I don't think we need to read all of them.

5 MS. CONNELLY: That's fine by the government, Your
6 Honor.

7 THE COURT: And we will just file this as an exhibit,
8 which will go back to the jury.

9 Secondly, the stipulation of the parties regarding the City
10 of Anacortes v. Eric Shibley. The United States of America, by
11 and through Laura Connelly, trial attorney for the United States
12 Department of Justice, and Brian Werner, Assistant United States
13 Attorney for the Western District of Washington, and defendant,
14 Eric Shibley, and his counsel, Michael Nance, hereby stipulate to
15 the following:

16 On December 13, 2018, the defendant, Eric Shibley, signed a
17 sentence order that he was sentenced to a 24-month term of
18 probation in Skagit County District Court for a misdemeanor
19 offense. Mr. Shibley's term of supervision expired in
20 December 2020.

21 The jury may accept the above statement of facts as if they
22 had been proven beyond a reasonable doubt at trial. Nothing in
23 this stipulation restricts the ability of either party to present
24 additional evidence regarding the transaction described above.

25 These exhibits, then, will be -- or these stipulations will

1 be marked as exhibits and will be given to the jury with the
2 other exhibits at the end of the trial. All right?

3 MS. CONNELLY: Thank you, Your Honor.

4 Q Special Agent Moran, I believe we ended when you were looking
5 at Government's Exhibit 48. And if we could pull that up, again.
6 And, Mr. Arnold, if we could again get the top header from the
7 previous page. With apologies, Mr. Arnold. If we scroll back
8 down to page 3, and then just include the header information
9 from -- if you could scroll back out, please. If you scroll up
10 to page 2, and look at the bottom portion.

11 What was the date that this portion of the e-mail thread was
12 sent?

13 A May 29th, 2020.

14 Q Who was it sent by?

15 A Mr. Shibley.

16 Q If we could scroll back down to page 3, Mr. Arnold. What is
17 this? What does this e-mail say?

18 A This e-mail is from Mr. Shibley to Harvest Small Business.
19 He writes, "Your boss called earlier and asked for a couple of
20 names to verify that they are working on-site. They know me by
21 my name and A Team. They are..." and he provides a list of
22 names.

23 Q And what loan had Mr. Shibley applied for at Harvest? What
24 company had he applied for?

25 If we look at the subject line. What is the subject line?

1 A Thank you. It's SS1 LLC.

2 Q And how many employee names did he provide to Harvest for SS1
3 LLC?

4 A He provided ten names.

5 Q And, again, I note that it says, "Jeremy's boss called this
6 time." What really happened to prompt Mr. Shibley's e-mail to
7 Harvest?

8 THE COURT: She's already testified to that, counsel.

9 MS. CONNELLY: This is a separate e-mail, Your Honor. I
10 apologize.

11 THE COURT: All right.

12 A Again, this was an uncover agent calling Mr. Shibley and
13 asking for this information, posing as a representative of
14 Harvest this time.

15 Q So was it a second undercover call?

16 A Yes.

17 Q If we can now pull up Government's Exhibits 48 and 40
18 together, Mr. Arnold. If we could scroll down on Government's
19 Exhibit 50. Thank you.

20 How do the employee names compare between the Celtic and
21 Harvest e-mails?

22 A They're the same names. One has a few additional names added
23 to it.

24 Q And were the Celtic Bank loan and the Harvest loan for the
25 same company?

1 A No.

2 Q And were either of them for the A Team Holdings?

3 A No.

4 Q During your investigation, did you attempt to find the people
5 listed by Mr. Shibley as his employees in these two e-mails?

6 A We did.

7 Q And just looking at the fifth person that's identified on
8 both of these e-mails, Sam Morgan. Were you able to identify an
9 individual with the name Sam Morgan, with the identifier -- with
10 the social security number ending in 3218?

11 A Yes.

12 Q Was there anyone -- were there multiple Sam Morgans with that
13 name and identifier?

14 A There was only one Sam Morgan, with those last four social
15 security digits.

16 Q And during your investigation, did you attempt to reach out
17 to that Sam Morgan?

18 A Yes.

19 Q And were you able to do so?

20 A No.

21 Q Why not?

22 A Mr. Morgan died in 1987.

23 Q And so if we can unpublish.

24 I'm showing the witness what's been marked as Government's
25 Exhibit 103. Do you recognize this document?

1 A Yes.

2 Q What is it?

3 A It's the death certificate for Sam Morgan.

4 Q And did you receive this death certificate from the
5 Pennsylvania Department of Health, as part of your investigation?

6 A Yes.

7 MS. CONNELLY: I would move to admit Government's
8 Exhibit 103.

9 MR. NANCE: Objection, relevance, Your Honor.

10 THE COURT: Overruled. It will be admitted.

11 (Exhibit No. 103 admitted.)

12 MS. CONNELLY: Permission to publish, Your Honor.

13 THE COURT: Yes.

14 Q Based on your review of the death certificate, when did Sam
15 Morgan, with the last four digits 3218 of his social security
16 number, pass away?

17 A In 1987.

18 Q Is that seen as the date of death, on the top right-hand
19 portion?

20 A Yes.

21 Q If we could turn back to Government's Exhibit 50, just one
22 more time. If you could scroll down. When was Sam Morgan's name
23 used by Eric Shibley, as one of his purported employees to
24 Celtic?

25 A On May 28th, 2020.

1 Q And looking back at Government's Exhibit 48, if we can look
2 at page 2, when was Sam Morgan's name used by Eric Shibley as one
3 of his purported employees, to Harvest?

4 A On May 29th, 2020.

5 Q As part of the investigation, did A Team Holdings, Dituri
6 Construction, ES1, SS1, Shibley MD, PLLC and SFC, or Seattle's
7 Finest Cannabis LLC, receive grand jury subpoenas for documents?

8 A Yes.

9 Q And who was served with those grand jury subpoenas?

10 A Mr. Shibley was served.

11 Q What date were those subpoenas served?

12 A June 10th, 2020.

13 Q What did those subpoenas ask for?

14 A We asked for employee information, to include names of
15 employees, payroll records, personnel files, any payments,
16 payroll ledgers. I think I'm repeating myself. We asked for
17 W-2s, W-3s, W-4s, 1099s. I-9 employment eligibility forms. We
18 asked for communications with certain employees, the employees
19 that he had provided, the names that he had provided. We asked
20 for bank account information. We asked for any records related
21 to loans applied for, to include the PPP and EIDL loans. And we
22 also asked for books and records of any expenditures and receipts
23 for those businesses.

24 Q So I'm showing the witness Government's Exhibit 225, which is
25 the stipulation that was just read into evidence by the Court.

1 And it includes the documents that the Shibley entities provided
2 in response to the grand jury subpoena.

3 Are all the documents attached to grand jury -- or to
4 Government's Exhibit 225, the documents that the Shibley entities
5 provided in response to the grand jury subpoena?

6 A Yes.

7 MS. CONNELLY: And I would move this into evidence now,
8 Your Honor.

9 THE COURT: It's already in.

10 MS. CONNELLY: Okay.

11 Q Did the production contain any --

12 MS. CONNELLY: Permission to publish. I'm sorry.

13 THE COURT: Yes.

14 Q Did the production from the Shibley entities contain any
15 payroll journals?

16 A No.

17 Q Did it contain any payroll ledgers?

18 A No.

19 Q Did it contain any employee identification?

20 A No.

21 Q Did it contain any employment contracts?

22 A No.

23 Q Did it contain any employee files?

24 A No.

25 Q Did it contain any records of employee benefits?

1 A No.

2 Q Did it contain any issued W-2s?

3 A No.

4 Q Did it contain any I-9s, or employment eligibility forms?

5 A No.

6 Q Did it contain any books and records of receipts and
7 expenditures?

8 A No.

9 Q Did it contain any lists of employees?

10 A No.

11 Q Did it contain any records of payments to employees?

12 A No.

13 Q Did it contain W-3s and 941s?

14 A No.

15 I'm sorry, it did. As part of the loan.

16 Q Were the --

17 THE COURT REPORTER: I'm sorry. Could you repeat your
18 question, please?

19 THE COURT: One at a time, please.

20 MS. CONNELLY: I apologize.

21 Q Go ahead.

22 A I'm sorry, it did include W-3s and 941s that had been
23 submitted as part of the loan-application process.

24 Q Did it contain anything that supported the numbers shown in
25 those 941s and W-3s?

1 A No.

2 Q If we could just take a moment to look at a few of the items
3 that were produced. I'm showing you what's at page 110 of
4 Government's Exhibit 225, which is a purchase agreement.

5 What is this document?

6 A This is a purchase agreement between Thomas Dituri and Eric
7 Shibley, for the sale of Dituri Construction LLC.

8 Q And what is the effective date of the agreement?

9 A May 5th, 2020.

10 Q Who was the buyer?

11 A Eric Shibley.

12 Q Who was the seller?

13 A Thomas Dituri.

14 Q And just looking at paragraph 1, under "terms." If we could
15 just get a little bit more of that, Mr. Arnold. Thank you.

16 What is being sold?

17 A Dituri Construction LLC.

18 Q The ownership interest in Dituri Construction LLC?

19 A Correct.

20 Q And looking at paragraph 3, which is the purchase price, how
21 much did Mr. Shibley buy ownership interest in Dituri
22 Construction for?

23 A \$10.

24 Q And I'm showing you the e-mail that's the last record
25 contained in the stipulation, which is at page 273, Government's

1 Exhibit 225. What is this e-mail?

2 A This is an e-mail from Eric Shibley to Mario Davis.

3 Q Who is Mario Davis?

4 A Mario Davis is an accountant that Mr. Shibley hired.

5 Q And looking at the header information, what's the date of
6 this e-mail?

7 A June 25th, 2020.

8 Q Is that after these loans had been applied for?

9 A Yes.

10 Q And just looking at the first paragraph, if we could zoom in,
11 Mr. Arnold.

12 What is Mr. Shibley telling Mr. Davis he's paying his
13 employees annually?

14 A He says he's paying them between \$8,000 to \$12,000 per year,
15 in 2019 and 2020.

16 Q And do those numbers match the loan applications that we have
17 been through?

18 A No.

19 Q Tell us why not.

20 A Based on the monthly payroll numbers and the amount of
21 employees that were listed on the applications, that would equal
22 an annual salary of about \$75,000 to \$96,000 per employee, which
23 is inconsistent with the \$8,000 to \$12,000 that's listed here.

24 Q So is he claiming in this e-mail to his accountant that he
25 pays each employee between \$8,000 and \$12,000 annually?

1 A Yes.

2 THE COURT: Wait a moment.

3 MR. NANCE: Your Honor, objection. The e-mail speaks
4 for itself.

5 THE COURT: Sustained.

6 Q Did Mr. Shibley continue applying for COVID relief loans,
7 after the receipt of the subpoena on June 10th of 2020?

8 A Yes.

9 Q And did he receive COVID relief funds after the receipt of
10 the subpoena?

11 A Yes.

12 Q And did he try to withdraw COVID relief money, after the
13 receipt of the subpoena?

14 A Yes.

15 Q Thank you.

16 MR. CONNELLY: No further questions.

17 THE COURT: All right. Cross.

18 CROSS-EXAMINATION

19 BY MR. NANCE:

20 Q Good morning, Agent Moran.

21 A Good morning.

22 Q You are one of the case agents in this investigation?

23 A Correct.

24 Q Who were the other case agents?

25 A We had agents from a number of agencies: Small Business

1 Administration; Office of Inspector General; the IRS; Department
2 of Homeland Security; FDIC OIG; TIGTA; and HHS OIG.

3 Q Each agency has a case agent, the main agent assigned to the
4 case; is that the way it works?

5 A Correct.

6 Q Agent Eric Hunter would have been one of them, with the
7 Office of Inspector General?

8 A That's correct.

9 Q Yeah. And Glen Weisman would be another agent with
10 Department of --

11 A Correct.

12 Q -- Homeland Security?

13 A Yes.

14 Q So among other things, you've established certainly that
15 Mr. Shibley resided at and had property at 4700 36th Avenue
16 Southwest?

17 A Yes.

18 Q Right. And that he also owned other real estate in the area?

19 A Yes.

20 Q In the West Seattle area?

21 A Correct.

22 Q At least three different properties, in addition to the 36th
23 Avenue address?

24 A Yes.

25 Q Obviously he has a working internet, working phone number.

1 He's easy to find.

2 A Yes.

3 Q He was easy to find during this period. And that he had
4 several LLCs for which he served as the manager?

5 A Yes.

6 Q And those were, in fact, registered with the Washington
7 Secretary of State?

8 A Yes.

9 Q At least two of them, maybe it was three of them, if I heard
10 your testimony correctly, were registered much earlier, 2017,
11 2018?

12 A Yes.

13 Q Is that right? SS1 was in 2017. Seattle's Finest Cannabis,
14 2017. And A Team Holdings, 2018?

15 A Yes. Some of them were registered earlier, correct.

16 Q There was some testimony early on about there being a
17 dissolution of one or more of these by the Secretary of State,
18 and that they were much more recently reinstated?

19 A Yes.

20 Q Now, an LLC, that's a limited liability corporation that's
21 created?

22 A Correct.

23 Q There's a -- isn't there an annual fee, might be the word, or
24 annual -- there may be another word for it, but there's a fee, a
25 cost that is imposed by the state each year. A license fee,

1 perhaps?

2 A I don't know. I'm assuming.

3 Q Well, if you are dissolved and then you reinstate with the
4 Secretary of State, wouldn't it normally reflect just bringing
5 your back fee up to par, getting it paid?

6 A I don't -- I'm not familiar with everything you have to do.
7 I know you have to make sure you get your filings up to date. I
8 don't know if it also involves a fee as well.

9 Q Well, it's not unlike anyone just being in business in the
10 state. They are required to stay current with -- to register
11 with the state authorities and to pay their business, their
12 license fee?

13 A Yes.

14 Q Okay. There was extensive testimony about these PPP
15 applications and the inclusion of a Form 941 with the
16 applications.

17 A Yes.

18 Q If we could just take a look at a couple of those. If I can
19 get the number right here. Exhibit No. 1, I think page 5. Could
20 we call that up?

21 MS. CONNELLY: It would be page 9.

22 Q Okay. So this is previously admitted. 941 was part of the A
23 Team Holdings PPP application --

24 A Yes.

25 Q -- was that your testimony?

1 This was for -- reflects -- it's a quarterly tax return for
2 the fourth quarter of 2019 for A Team Holdings --

3 A Yes.

4 Q -- is that correct?

5 Where it indicates certain number of employees. I think it
6 says 48 employees and a payroll of around \$975,000?

7 A Correct.

8 Q Right. And then if we could come down to the latter half of
9 that. It indicates that the total taxes -- it's a fairly large
10 amount -- of \$149,000?

11 A Yes.

12 Q And then if you look at line 13, total deposits for this
13 quarter. And it's blank.

14 A Yes.

15 Q Yes.

16 Presumably, that means zero. Nothing?

17 A Yes.

18 Q Nothing has been paid and/or deposited.

19 Then if you look at 14, there's the balance due for taxes, of
20 \$149,175?

21 A Yes.

22 Q Correct?

23 And then I will pull up another couple of examples. But if
24 we could go later into the same exhibit, I think it's several
25 pages down. Or same company. It's part of the same exhibit.

1 First quarter of 2020. Again, 48 -- if you look at line 1, 48
2 employees, wages of \$768,000.

3 Then if we could come down to the latter half of that, total
4 taxes \$117,504 is owed?

5 A Yes.

6 Q It's reflected as that being owed. Again, line 13 is blank.
7 So nothing has been paid toward this. And 14 reflects that
8 amount \$117,504 is owed, is currently owing to the IRS?

9 A Yes.

10 Q Okay.

11 A Balance due.

12 Q And then one -- just one more example of this.

13 Exhibit No. 3, page 10. This is Dituri Construction.

14 There's employees listed, there's wages listed. Then the latter
15 half, again, of that. Again, \$119,952 is the tax that is
16 reflected as owing. Nothing has been paid and/or deposited, and
17 it's still outstanding, according to this?

18 A Yes.

19 Q Okay.

20 Agent, I'm sure you have gone through all of -- you can take
21 it down -- you have gone through all of the applications. And
22 for the PPP loans, were 941s generally submitted in connection
23 with those?

24 A Yes.

25 Q Did you find any examples of a 941 that reflected that

1 something had actually been paid toward the tax?

2 A Yes.

3 Q What was that?

4 A As we showed earlier, at least one of the 941s showed that
5 monthly deposits were being paid to the IRS.

6 Q Was there an amount?

7 A Yes.

8 Q What was that?

9 A I would have to see the form again.

10 Q You would have to look. It's okay.

11 You testified at some length about the employees, there was
12 testimony about an undercover call made, and Mr. Shibley
13 volunteering a number of names of folks that worked for him.

14 A Yes.

15 Q Yeah. And you did follow-up on some of that, right?

16 A Correct.

17 Q In fact, you spoke to several employees, didn't you?

18 A Yes.

19 Q You and Agent Hunter actually spoke to an individual named
20 Ronald Reel, who was one of the folks listed?

21 A Mr. Reel actually chose not to speak to us.

22 Q I'm sorry?

23 A He chose not to speak to us. We did give him a subpoena, but
24 he said Mr. Shibley just wanted him to give the subpoena to
25 Mr. Shibley's attorney.

1 Q Okay. But he was identified as an employee of Mr. Shibley,
2 and you approached him and found him?

3 A We found him. It was difficult, because he's homeless. He
4 lives in his van. So it took some time, but we did find him.

5 Q Okay. And you met him in a McDonald's parking lot?

6 A Correct, yes.

7 Q You and Agent Hunter and Agent Weisman, I believe?

8 A Yes.

9 Q Yes.

10 THE COURT: Let me see counsel at sidebar.

11 (Sidebar held between court and counsel as follows:)

12 THE COURT: Did I rule on a missing witness motion in
13 limine?

14 MS. CONNELLY: You did not.

15 THE COURT: The law is that if the witnesses are equally
16 available to both sides, you cannot refer to them as missing
17 witnesses, or bring up the fact that the government didn't call
18 them. It's not appropriate.

19 MR. NANCE: My --

20 THE COURT: That's my ruling.

21 MR. NANCE: I understand that. My intent was to ask
22 this witness about her interviews or attempts to interview these
23 folks.

24 THE COURT: Well, let's see how it goes. Okay.

25 MR. NANCE: Okay.

1 MS. CONNELLY: Your Honor, I would also note we'd object
2 under hearsay rules. Obviously, the attempts to interview --

3 THE COURT: If it's objectionable, make an objection.

4 MS. CONNELLY: Okay. Thank you.

5 (Sidebar concluded.)

6 Q Agent Moran, you and Agent Hunter and Agent Weisman actually
7 approached and spoke with several people in the McDonald's
8 parking lot that day, that had been identified as employees of
9 Mr. Shibley?

10 A Yes.

11 Q You talked to David Sandoval, who had previously been
12 identified as an employee of Mr. Shibley?

13 A Correct.

14 Q Did you confirm with him that he worked for Mr. Shibley
15 during the relevant time period?

16 MS. CONNELLY: Objection, hearsay.

17 THE COURT: Sustained.

18 Q Did Mr. Sandoval appear to be homeless?

19 A I believe he told us that he couch surfed.

20 Q Okay. Did you determine where he received his mail?

21 A Because --

22 MS. CONNELLY: Objection, hearsay.

23 THE COURT: Sustained.

24 Q Wasn't another individual, Mataese Tela, also identified as
25 an employee of Mr. Shibley?

1 A Yes.

2 Q Did you or Agent Hunter speak with him --

3 A Yes.

4 Q -- that day, at that place?

5 A Yes.

6 Q Did you learn anything from him that furthered your
7 investigation?

8 MS. CONNELLY: Objection. Hearsay.

9 THE COURT: Sustained.

10 Q Did your investigation team also speak with Ronisha Smith?

11 A Yes.

12 Q She had been identified as an employee of Mr. Shibley, during
13 the relevant period?

14 A Yes.

15 Q Did you record statements with these folks?

16 A Yes.

17 Q Did you speak with Eric Pula, who Mr. Shibley had identified
18 as an employee?

19 A No. We tried to.

20 Q Did you speak with Jerome Muna, who had been identified has
21 an employee?

22 A No. We also attempted to interview him.

23 Q How about Sarieck Butler-Hem?

24 A No. We couldn't locate him.

25 Q How about Carlita Lopez?

1 A No. We also had difficulty locating her.

2 Q Did you get leads, during this time, that you were able to
3 pursue toward locating other employees?

4 A I believe we followed every lead that we had to try and find
5 the people that he had said were his employees.

6 Q Did you go to any of the work sites where work had been
7 performed by employees?

8 A We went to -- I went to one of the houses that Mr. Shibley
9 owns.

10 Q Were you able to determine that there had been some
11 renovation work done at the house?

12 A I did not go inside the house. I noticed that one of the
13 doors was missing to the house.

14 Q You have indicated that he had at least three properties, in
15 addition to the place that he lived. Did you go to each of
16 those?

17 A No. I only went to one of the properties.

18 Q Just the one.

19 Did you do any other follow-up, following this meeting with
20 these employees in the parking lot?

21 A What type of follow-up? The investigation continued after
22 that.

23 Q Okay. Anything that was a direct consequence of meeting in
24 the parking lot with these witnesses, or with these employees?

25 A I believe we continued, after that date, to try and track

1 down the employees we haven't been able to find.

2 Q You referred to this Sam Morgan person, right?

3 A Yes.

4 Q Actually, could we call up that Exhibit No. 103? I'm going
5 to ask you to take a look at the date of birth that's reflected
6 on this death certificate.

7 A Yes.

8 Q What date is that?

9 A It's December 13th, '21.

10 Q That would be 1921?

11 A Yes. 1921.

12 Q So this person, if they were still alive, would be almost
13 100 years old?

14 A Yes.

15 Q And the only connection -- well, you found this by trying to
16 match the name with the last four digits of a -- what was
17 tendered as the social security number?

18 A Correct.

19 Q Okay. You don't really know the ultimate source of that, do
20 you?

21 A The source of the social security number?

22 Q Right.

23 A Mr. Shibley provided those.

24 Q That was given to you, but you don't know where he got it?

25 A I don't know where he got it.

1 Q Okay. You would agree that the name Sam Morgan is a fairly
2 common American name?

3 A Sam Morgan is common. Sam Morgan with the last four social
4 security digits, is this Sam Morgan.

5 Q Was there an ID, that you're aware of, associated with this
6 person, that was used at any point?

7 A Are you referring to the Sam Morgan that died?

8 Q Yeah.

9 A I don't know.

10 Q Okay. Usually you think of construction workers as being a
11 little a bit younger than that?

12 A Yes, you would think.

13 Q He was probably born after 1921?

14 A You would think, yes.

15 Q Yes. You can take it down. Just one moment.

16 Agent, just to clarify, you're testifying that you did not
17 have contact with Eric Pula?

18 A I did not, no.

19 Q You don't -- you have never gone to his -- met with him, or
20 gone to his apartment, anything of that nature?

21 A I believe I went to several addresses trying to find him.

22 Q How about any of your fellow investigators in this case? Are
23 you aware of any contact they might have had with Eric Pula?

24 A I think there was an undercover call with Mr. Pula.

25 Q Oh, who was that? Who did that?

1 A One of -- an undercover agent did that, posing as a bank
2 representative. As a federal agent, none of us spoke to --
3 interviewed him as a federal agent.

4 Q Okay. Anything about that call that would refute the notion
5 that he was an employee of Mr. Shibley?

6 MS. CONNELLY: Objection, hearsay.

7 THE COURT: Sustained.

8 MR. NANCE: Nothing further.

9 THE COURT: Any redirect?

10 MS. CONNELLY: Nothing, Your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Put your mask back on, please.

14 MS. CONNELLY: The government calls Roman Hernandez.

15 ROMAN HERNANDEZ,

16 having been sworn under oath, testified as follows:

17 THE WITNESS: I do.

18 THE COURT: Take your mask off.

19 DIRECT EXAMINATION

20 BY MS. CONNELLY:

21 Q Good morning.

22 A Good morning.

23 Q Can you please state your name and spell your last name for
24 the record?

25 A Yes. Roman Hernandez.

1 Q There's, I think, some water next to you. If --

2 A Thank you.

3 H-E-R-N-A-N-D-E-Z.

4 Q I will give you one moment. And where do you work,
5 Mr. Hernandez?

6 A I work for the Internal Revenue Service.

7 Q Is that also known as the IRS?

8 A It is, yes.

9 Q What do you do for the IRS?

10 A I'm a court-witness coordinator for the IRS.

11 Q What does a court-witness coordinator do?

12 A I review income tax returns and other IRS records. I prepare
13 them to be used as exhibits at trial. And when I appear at
14 trial, I represent the Commissioner of IRS, in his role as
15 custodian of records.

16 Q And how long have you been doing that job?

17 A For ten years now.

18 Q And how long have you been with the IRS?

19 A Twenty years.

20 Q Altogether, what other jobs have you held with the IRS?

21 A My first job was called a contact representative. It was one
22 of the people -- you could call into the IRS and speak with them
23 on the phone. My next job was as an examiner, conducting audits
24 by phone and by correspondence. And my last job, my job prior to
25 this, was with the taxpayer advocate service. They're a separate

1 part of the IRS that helps people deal with the IRS, if they're
2 in an economic-hardship situation.

3 Q And in your time with the IRS, have you become familiar with
4 how taxes are filed?

5 A I have, yes.

6 Q Can you just tell the jury, what is an IRS Form 941?

7 A Sure.

8 A Form 941 -- sorry -- it's a business form. It's used to
9 file employment taxes. It's used to compute the amount of
10 employment taxes that are due with the form, and helps you know
11 what to pay for those taxes.

12 Q And who files a Form 941?

13 A The employer. The business does.

14 Q And why would a business file a Form 941?

15 A They're required to file it if they have employees.

16 Q How often does a business file a Form 941?

17 A It's filed on a quarterly basis.

18 Q And what does a Form 941 document?

19 A It documents the number of employees they had that quarter,
20 the amount of wages they paid. It helps them figure the amount
21 of tax that they need to withhold from the employee's pay.

22 Including FICA tax, which is social security tax, and Medicare
23 tax.

24 Q And why does the company withhold money from their employees?

25 A They're required to. The employee -- they're required to

1 withhold for social security and Medicare tax. They withhold
2 half of that tax from the employer's pay, and they're required to
3 pay half, the other half of the tax, on the employer's behalf.

4 Q Would a business, as an independent contractor, use a
5 Form 941, or would it use a different type of IRS form?

6 A They would not use a 941.

7 Q What taxes is a business required to pay for its employees?

8 A They're required to pay or withhold and pay federal income
9 tax, social security tax, and Medicare tax.

10 Q And what happens if an employer is withholding taxes from its
11 employees, but is not paying the IRS?

12 A Well, that money really belongs to the employees, so they're,
13 in a sense, keeping the employees' money, when they should not
14 be.

15 Q When is an employer required to pay the taxes that are noted
16 on a Form 941? If you want to take a moment, and -- yeah.

17 A I'm sorry, yeah. Okay.

18 Q So when is an employer required to pay the taxes noted on a
19 Form 941?

20 A Well, there's a couple of different schedules for paying the
21 tax. It could be a semiweekly payment schedule, or a monthly
22 schedule.

23 Q Should a business pay the employees' taxes, after filing a
24 Form 941?

25 A No, they should not.

1 Q And so turning to a different tax form entirely, can you tell
2 the jury what is a form W-3?

3 A Yes. A form W-3 is a transmittal form. It's the form used
4 to send W-2s to the Social Security Administration.

5 Q And how often is a W-3 filed?

6 A It's filed annually.

7 Q Why is a form W-3 filed?

8 A Because employers are required to report that W-2 information
9 to the Social Security Administration.

10 Q And can you just tell us, what is a Form W-2?

11 A Form W-2 is a wage and -- wage and tax statement. It's given
12 to you by your employers every year, so you can file your taxes.

13 Q And so do the employees file their W-2s with the Social
14 Security Administration, or with the IRS?

15 A The employees?

16 Q Uh-huh.

17 A Well, they do when they file their forms 1040, yes.

18 Q Is the Form 1040 a personal tax return?

19 A It is yes.

20 Q Do employers also file the forms W-2?

21 A Yes, they do.

22 Q Why is that?

23 A Well, they're required to give that information over to the
24 Social Security Administration. But the IRS also receives that
25 same information. And what we do with it is we have the

1 dollar-matching program. So we look to see what the employers
2 say they paid their employees, as far as wages, and withholding
3 for taxes. We also look at the employee's Form 1040 to see what
4 they reported on their own return.

5 Q So is it basically a way to link up the employer with the
6 employee?

7 A Yes, it is.

8 Q Does IRS have a recordkeeping system?

9 A They do. Yes.

10 Q Are you familiar with it?

11 A I am.

12 Q Do you work in that system, as a regular part of your job?

13 A I do.

14 Q What is that system called?

15 A It's broadly called the Master File. But there's a couple
16 pieces to it. There's the Business Master File and the
17 Individual Master File.

18 Q But altogether, it's known as the Master File?

19 A Yes.

20 Q What does it contain?

21 A It contains the record of all, like, processed tax returns,
22 information from electronic records, and other sources. It's the
23 main repository for tax information for the IRS.

24 Q Does it also contain payment records of payments filed with
25 the IRS?

1 A It does, yes.

2 Q And is it used in the regular course of business with the
3 IRS?

4 A Yes.

5 Q Are the records kept in the IRS Master File regularly made
6 and preserved as part of the public business of the IRS?

7 A They are, yes.

8 Q Can searches be run in the Master File?

9 A Yes.

10 Q Do you know how to conduct searches on that system?

11 A I do, yes.

12 Q Do you do that as a regular part of your job?

13 A Yes.

14 Q Were you asked by the Department of Justice to conduct
15 searches of IRS records related to certain entities in this case?

16 A Yes, I was.

17 Q And so did you run searches for the tax records of a company
18 called the A Team Holdings, with an EIN ending in 7088?

19 A Yes.

20 Q Did you find any Forms 941 filed for the A Team Holdings for
21 tax years 2019 or 2020?

22 A I did not, no.

23 Q Did you find any tax records, at all, filed for A Team
24 Holdings in tax years 2019 and 2020?

25 A I didn't.

1 Q And if we could pull up the 941 from Government's Exhibit 1,
2 which is at page 9.

3 MS. CONNELLY: May I publish, Your Honor?

4 THE COURT: Yes.

5 MS. CONNELLY: It has previously been admitted.

6 Q Was this document filed with the IRS?

7 A No, it was not.

8 Q And if we can pull up the second 941 from Government's
9 Exhibit 1, which is the 941 for the A Team Holdings for the
10 second quarter -- or the first quarter of 2020. Was this
11 document filed with the IRS?

12 A It was not, no.

13 Q We can take that down. Thank you, Mr. Arnold.

14 Did you also run searches for the tax records of Dituri
15 Construction LLC with an EIN ending in 8508?

16 A I did, yes.

17 Q Did you find any Form 941 filed for Dituri Construction,
18 filed for tax years 2019 or 2020?

19 A I did not.

20 Q Did you find any tax records at all, for Dituri Construction,
21 for tax years 2019 and 2020?

22 A No.

23 Q And if we could pull up the 941 from Government's Exhibit 3,
24 which has previously been entered into evidence.

25 MS. CONNELLY: May I publish, Your Honor?

1 Q And this is a 941 for the first quarter of 2020 for Dituri
2 Construction LLC. Was this document filed with the IRS?

3 A No, it was not.

4 Q And if we could pull up the second 941 for Dituri
5 Construction LLC, for the first quarter of 2020, and Government's
6 Exhibit 4, which has previously been entered into evidence.

7 MS. CONNELLY: May I publish, Your Honor?

8 Q Is this a 941 for the same period?

9 A Yes.

10 Q And was this second 941 filed with the IRS?

11 A No, it was not.

12 Q I will take that down. Thank you, Mr. Arnold.

13 Did you run searches for the tax records for Eric R. Shibley
14 MD, PLLC with an EIN ending in 9052?

15 A I did, yes.

16 Q Did you find any Forms 941 filed for that business, for the
17 tax years 2019 and 2020?

18 A I did not.

19 Q Did you find any tax records at all, filed for that business
20 for the tax years 2019 and 2020?

21 A I did not, no.

22 Q If we could pull up the 941 from Government's Exhibit 23,
23 which has previously been entered into evidence, which is at
24 page 5.

25 MS. CONNELLY: Permission to publish, Your Honor.

1 THE COURT: Yes.

2 Q This is a 941 for Eric R. Shibley MD, PLLC, for the first
3 quarter of 2020. Was this filed with the IRS?

4 A No, it was not.

5 Q We can take that down. Thank you.

6 Did you run searches for the tax records for ES1 LLC with an
7 EIN ending in 5849?

8 A I did, yes.

9 Q Did you find any Form 941 filed for ES1 LLC for the tax years
10 2019 and 2020?

11 A I did not.

12 Q Did you find any tax records at all for ES1 LLC for the tax
13 years 2019 and 2020?

14 A No, I didn't.

15 Q And if we could pull up the 941 from Government's Exhibit 22,
16 which has previously been entered into evidence, page 5.

17 MS. CONNELLY: Permission to publish, Your Honor?

18 THE COURT: Yes.

19 Q This is a 941 for ES1 LLC for the first quarter of 2020. Was
20 this filed with the IRS?

21 A No, it was not.

22 Q We can take that down. Thank you.

23 Did you run searches for tax records for SFC, or Seattle's
24 Finest Cannibis LLC, with an EIN ending in 3580?

25 A Yes, I did.

1 Q And did you find any Forms 941 for Seattle's Finest Cannabis
2 for the tax years 2019 and 2020?

3 A I did not, no.

4 Q Did you find any tax records at all for Seattle's Finest
5 Cannabis for the tax years 2019 and 2020?

6 A No, I didn't.

7 Q And if we could pull up the 941 from Government's Exhibit 2,
8 which has previously been entered into evidence. That's at
9 page 6.

10 MS. CONNELLY: Permission to publish, Your Honor?

11 THE COURT: Yes.

12 Q This is a 941 from the first quarter of 2020 for Seattle's
13 Finest Cannabis with an EIN of 3580. Was this filed with the
14 IRS?

15 A No, it was not.

16 Q You can take that down.

17 Did you run searches for the tax records for SS1 with an EIN
18 ending in 7509?

19 A I did, yes.

20 Q And did you also run searches for the tax records for SS1
21 with an EIN ending in 2134?

22 A Yes.

23 Q Did you find any Forms 941 filed for either of those SS1s for
24 the tax years 2019 and 2020?

25 A I did not.

1 Q Did you find any tax records filed for SS1 for the tax years
2 2019 or 2020?

3 A No.

4 Q If we could pull up the 941 from Government's Exhibit 5,
5 which has previously been entered into evidence.

6 MS. CONNELLY: Permission to publish, Your Honor?

7 THE COURT: Yes.

8 Q And this is an SS1 941 for the first quarter of 2020, with an
9 EIN ending in 7509. Was this filed with the IRS?

10 A No, it was not.

11 Q We will take that down. Thank you, Mr. Arnold.

12 You mentioned before that W-3s are actually filed with the
13 Social Security Administration and not the IRS, but in its Master
14 File, is the IRS able to see whether a business has filed W-3s?

15 A Yes. When we receive the W-2 information, it includes -- it
16 also includes the W-3 information.

17 Q And did you run searches for W-3s for the businesses that we
18 have just covered?

19 A I did, yes.

20 Q And had any of them filed W-3s for the tax year 2019?

21 A No.

22 Q And so if we could pull up the W-3 from Government's
23 Exhibit 5, which has previously been entered into evidence,
24 Mr. Arnold.

25 Thank you.

1 MS. CONNELLY: Permission to publish, Your Honor?

2 Q This is a W-3 for the tax year 2019 for SS1 LLC with an EIN
3 ending in 7509. Was this document filed with the IRS?

4 A No, it was not.

5 Q We can take that down. Thank you.

6 Does the Master File also allow you to search whether a
7 business has made payments?

8 A Yes.

9 Q And did any of the companies that we have talked about pay
10 taxes in the tax years 2019 or 2020?

11 A No, they did not.

12 Q Thank you.

13 MS. CONNELLY: No further questions.

14 THE COURT: All right. Let's take the noon recess and
15 cross after lunch. We will be in recess until one o'clock.

16 THE CLERK: Please rise. Court is in recess.

17 (Recessed.)

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1 AFTERNOON SESSION

2 THE COURT: Please be seated.

3 Counsel, I had a question. The documents that were listed on
4 the stipulation as having been produced by the defendant, are you
5 assuming they are now in evidence?

6 MS. CONNELLY: Yes, I was, Your Honor. We showed them
7 with Special Agent Moran, and I think I moved the Government's
8 Exhibit 225 in, which contains all of that.

9 THE COURT: Which contains all of those exhibits?

10 MS. CONNELLY: Yes.

11 THE COURT: Is that agreed?

12 MR. NANCE: Yeah.

13 THE COURT: All right.

14 MR. NANCE: Just one point. I just want to alert the
15 court, I'm having a little bit of difficulty being able to
16 consult with Mr. Shibley at any time other than the actual trial
17 itself. I come in before court and he's not available. After
18 court, he's whisked away on lunch break. I finally got in today
19 for a few minutes, after waiting for 20 minutes.

20 And all I'm saying is, at the conclusion of the government's
21 case, we need to make an informed decision or an eloquent
22 decision on whether he testifies or not. And so I'm -- I would
23 very much appreciate having a little time to consult with him.

24 THE COURT: Yes. I'm directing the Marshals now, make
25 it happen. Okay?

1 THE MARSHAL: Yes, Your Honor.

2 THE COURT: All right. Bring in the jury.

3 (The following occurred in the presence of the jury.)

4 THE COURT: Please be seated.

5 All right. Mr. Nance.

6 CROSS-EXAMINATION

7 BY MR. NANCE:

8 Q Good afternoon, Mr. Hernandez.

9 A Good afternoon.

10 Q I believe you have been with the IRS, did you say, 20 years?

11 A Yes, I did.

12 Q Did you work as a revenue agent at all?

13 A No. I worked as what is called a "correspondence examiner."

14 Q Okay. One of the jobs you have described is checking --
15 pulling records, checking records. It wasn't framed very well.
16 Being able to go back into the IRS databases and pull up the past
17 filings of records or the absence of filings?

18 A Yes. In each of my roles I have done that.

19 Q Okay. And you testified to doing that in Mr. Shibley's case?

20 A Yes.

21 Q How far back did you go? You went back beyond early to
22 200 -- or did you, earlier than 2008?

23 A Well, by function I had to. When I pull up a filing record,
24 it pulls up everything that's still active on our database.

25 Q Okay. Did you determine that Mr. Shibley had, in fact, filed

1 tax returns at an earlier time?

2 A I did, for one of the entities. Eric Shibley MD. I can't
3 remember the full proper entity name.

4 Q PLCC, maybe?

5 A Yes.

6 Q He had filed in that entity's name?

7 A I did see returns filed prior to 2019 for those -- for that
8 entity, yes.

9 Q Okay. Let me ask you a little bit about Form 941. In fact,
10 maybe to help us through it, if we could call up exhibit, I think
11 it's Exhibit 1, page 5, or so. And if you could maybe -- yeah,
12 highlight or blow up the top half of it.

13 So if a person is preparing a 941, is there enough
14 information on what you see in front of you here, the top half,
15 to be able to automatically fill in the bottom half?

16 A I'm going to answer no. I'm not sure I understand your
17 question. But if all I had -- if I were the preparer and all I
18 had was, like, a business name, address, and EIN, and the tax
19 period, I wouldn't be able to guess at what would go in part one
20 or part two of the form, no.

21 Q Maybe I didn't ask it very well.

22 If you put in -- plug in the numbers to Question No. 1,
23 number of employees, and you plug in No. 2, wages, tips and other
24 compensation, what necessarily follows from that? Can you
25 complete the full form? Could a computer be programmed to

1 automatically fill in the blanks thereafter, or do you need more
2 information?

3 A No. I believe those two bits of information, lines one and
4 two, are needed to complete the rest of the form. Except for, I
5 think, there's a payment section.

6 Q Okay. I was asking -- I was going to ask you that next.

7 If we could come down to the second half. And actually if
8 you can include 5e above that?

9 MR. ARNOLD: Sure.

10 MR. NANCE: Yeah.

11 Q It looks to me like 5e is the sum of the lines above it, and
12 that everything kind of follows from there. It's identical
13 entries, less any amounts that had been paid or deposited toward
14 paying the obligation.

15 A Correct. It's basically a spreadsheet, or a worksheet, like
16 most tax forms.

17 Q Okay. And if we could -- maybe I'm asking this awkwardly.
18 But the lines above 5e, if we can get all of 5 in, Section 5.

19 MR. ARNOLD: And below?

20 MR. NANCE: Yeah. Yes. Try that.

21 Q So it appears that this 5a and 5c are added to give you 5e,
22 the sum of those two?

23 A Right. Column two of 5a and 5c.

24 Q Maybe one more request, to include all of the numbers, the
25 ones -- lines one through the end of it. There you go.

1 So it appears to me that the answer on 5a is a function of
2 the amount on line 2. You take the wages depicted on line 2, and
3 there's a set formula to multiply them by .124, to give you the
4 amount in Column 2.

5 A Correct.

6 Q Okay. And same thing -- not the same thing, but a similar
7 thing in 5c. It takes the same gross wage amount, and multiples
8 it by a different factor, relating to Medicare wages and tips.
9 And then 5a and 5c are added to give you 5e, which becomes the
10 taxable amount.

11 A Correct.

12 Q And then it's that, less any credits or any payments that
13 have been actually made?

14 A Yes.

15 Q So to go back to the first part of the question, if you plug
16 in the number of employees and the wages, you basically get the
17 bottom-line number, the balance due, unless there are payments
18 being made in?

19 A Correct. Notwithstanding any payments or credits that might
20 be available.

21 Q Okay. And this is a quarterly return -- you can take it
22 off -- this being a quarterly return, it should be filed every
23 quarter, if you are doing it the right way?

24 A Correct.

25 Q And ideally, or maybe presumptively, the money should be paid

1 in at the same time. You should pay the money if you owe it?

2 A Correct.

3 Q The IRS kind of expects that it would be paid?

4 A Yes.

5 Q Now, wouldn't the IRS still accept a 941 filing, without the
6 money?

7 A They would, yes.

8 Q Then they would take their own steps to try and collect it?

9 A Correct.

10 Q Because it would be immediately due, wouldn't it?

11 A Right. It's due upon the due date of the return.

12 Q Okay. And if the business is late in making payroll tax
13 deposits, there's a provision in the IRS code for a penalty?

14 A Correct.

15 Q To come clean with the IRS?

16 A Yes.

17 Q And that penalty is a percentage of the amount that's not
18 properly paid in?

19 A Yes.

20 Q It increases over time?

21 A I believe so, yes.

22 Q Yeah. So, it sounds like the tax law contemplates the
23 situation where people are late, or people don't pay when they
24 are supposed to. And they have got steps in place to deal with
25 it, or a procedure in place to deal with it?

1 A Right. It's discouraged. It should be paid on time and
2 filed on time.

3 Q You have indicated that the W-3 form and the W-2 forms are
4 both things that are filed annually?

5 A Yes.

6 Q And they are retrospective. They report what has been
7 paid --

8 A Right.

9 Q -- and withheld.

10 You would agree that the details of the tax law can sometimes
11 seem complicated and confusing to the layperson?

12 A I have heard that, yes.

13 Q You have heard that?

14 A Yeah.

15 Q A lot of us have.

16 MR. NANCE: Thank you.

17 THE WITNESS: You are welcome.

18 THE COURT: Redirect?

19 MS. CONNELLY: Nothing, Your Honor.

20 THE COURT: You may step down. Put your mask back on,
21 please.

22 THE WITNESS: Thank you.

23 MR. NANCE: Your Honor, I apologize. There's -- before
24 he leaves, there was one additional question I would like to have
25 been able to ask.

1 THE COURT: Sure.

2 MR. NANCE: If I would be permitted to do so.

3 THE COURT: Sure.

4 Q (By Mr. Nance) I'm sorry, Mr. Hernandez. Are you familiar
5 with the Form 7200?

6 A I don't have any experience with that form. I've heard it
7 mentioned, but I have never introduced it in court. And I have
8 never seen the form during my work in the previous jobs.

9 Q Okay. Would the name of it be familiar to you, the advance
10 payment of employer credits due to COVID-19?

11 A To be honest, no.

12 Q No?

13 A It's such a new law, it hasn't come up in my work before.

14 Q Okay. It obviously would have come up since the pandemic, to
15 have that kind of name?

16 A I expect to see it, yes.

17 Q Okay. All right. Thank you.

18 THE COURT: Okay.

19 MR. WERNER: Government calls Geoffrey Hillers.

20 GEOFFREY HILLERS,

21 having been sworn under oath, testified as follows:

22 THE WITNESS: Yes.

23 THE COURT: Have a seat. And take off your mask,
24 please.

25 ///

1 DIRECT EXAMINATION

2 BY MR. WERNER:

3 Q Good afternoon.

4 Please state your name and spell your last name.

5 A My name is Geoffrey Hillers. My last name is H-I-L-L-E-R-S.

6 Q Mr. Hillers, where do you work?

7 A I work for the Washington State Department of Revenue.

8 Q What is your position with the State Department of Revenue?

9 A I am a special agent.

10 Q How long have you been an agent with the Department of
11 Revenue?

12 A For approximately six years.

13 THE COURT: You can pull that mic back, if it's easier
14 for you.

15 THE WITNESS: Thank you.

16 Q What does a special agent for the Department of Revenue do
17 for a job?

18 A A special agent at the Washington State Department of Revenue
19 typically works complex or sensitive tax-collection cases. And
20 they may serve as a subject-matter expert at a certain area of
21 tax law.

22 Q And are those your duties, Mr. Hillers?

23 A Yes, they are.

24 Q And as part of your job for the Department of Revenue, are
25 you familiar with the records maintained by the Department of

1 Revenue?

2 A Yes, I am.

3 Q Are you able to search those records?

4 A Yes, I can.

5 Q And generally how are those records kept?

6 A They're generally kept in an electronic database.

7 Q Are you familiar with the functions of the Department of --
8 the Washington State Department of Revenue?

9 A Yes, I am.

10 Q What are they?

11 A The Washington State Department of Revenue is the primary
12 state taxing agency for Washington. It administers the State's
13 tax code, and it works to educate the public regarding the tax
14 code, as well as different registration or licensing
15 requirements.

16 Q What is a business license in the state of Washington? What
17 does that mean?

18 A A business receives a license that's issued by the Department
19 of Revenue for them to engage in different business activities.
20 It also registers that organization with the Department for the
21 purposes of filing tax returns.

22 Q When is a business required to get a license with the
23 Department of Revenue?

24 A A business would be required to obtain a license if they deal
25 with any sort of retail activity or retail transactions, or if

1 they have gross annual revenues that are beyond \$12,000.

2 Q You also mentioned state taxes, as part of the function of
3 the Department of Revenue, correct?

4 A That's right.

5 Q And what does -- what are the responsibilities of a
6 Washington State business as it relates to reporting, as it
7 relates to revenue -- as it relates to reporting to the
8 Department of Revenue?

9 A So when a business is registered with the Department of
10 Revenue, typically it has a filing requirement for excise-tax
11 returns, or other types of tax returns. And, for instance, if
12 they're engaging in business, then they're going to be filing
13 these tax returns on either a monthly, quarterly, or annual
14 basis.

15 Q And is there a threshold at which the business has to report
16 its revenue?

17 A So as I mentioned prior, if there's any sort of retail
18 activity, they would have to report that activity immediately.
19 If they're engaged in activity that is not retail-related, then
20 they aren't required to have a license until they reach \$12,000
21 in annual revenues. So at that point they would be required to
22 register and to report their tax information.

23 Q I'm going to show you on the screen, Mr. Hillers, what's been
24 previously marked as Exhibit 77. And, Mr. Arnold, could you
25 scroll through the first few pages of Exhibit 77? The next

1 couple of pages, all the way. And could you go to the last page?

2 Mr. Hillers, do you recognize -- prior to coming to court did
3 you view --

4 THE COURT: Counsel, this is not in evidence.

5 MR. WERNER: That's correct. Is it published?

6 THE COURT: Yes.

7 MR. WERNER: Oh, thank you.

8 Q Did you review Government's Exhibit 77?

9 A Yes, I did.

10 Q What is that, generally?

11 A That exhibit is the Department of Revenue's records for Eric
12 R. Shibley MD, PLLC.

13 Q What time period does it cover?

14 A I believe that it covers the periods of Quarter 3, 2017,
15 through 2020. I would have to double-check the record.

16 Q Could we go back to the first page, please, Mr. Arnold?

17 Again, are these the records that are maintained for Eric
18 Shibley MD, PLLC, by the Department of Revenue?

19 A That's correct.

20 Q Are they maintained in the normal course of business?

21 A Yes, they are.

22 MR. WERNER: Offer Exhibit 77.

23 MR. NANCE: No objection.

24 THE COURT: Admitted.

25 (Exhibit No. 77 admitted.)

1 Q And let's let the jury see the first page, please. Thank
2 you.

3 Is Eric Shibley MD, PLLC, was that registered with the
4 Department of Revenue?

5 A Yes, it was.

6 Q And I'm going to show page 17. What is page 17 of
7 Exhibit 77?

8 A Page 17 of that exhibit is a copy of the business license as
9 it's displayed within our records.

10 Q Why is there the word "Preview" on it?

11 A It shows "Preview," as a watermark, essentially, when it's
12 maintained in the electronic system. If you view it from within
13 the system, it will have a watermark. However, when it's
14 printed, that's removed.

15 Q Let's look at the next page, please, page 18.

16 What is page 18 of Exhibit 77?

17 A Page 18 is a combined excise tax return, for the quarterly
18 period of quarter one, 2017.

19 Q Can you describe -- what does this record show? What quarter
20 does this show, and what does this record show for Shibley MD?

21 A So this would shows business revenues over that quarterly
22 period. Essentially that's January, February, and March of 2017.

23 Q And is this a -- does this indicate that this excise tax
24 return was filed with the Department of Revenue?

25 A Yes, it does.

1 Q And could we blow out the bottom, additional information,
2 please, Mr. Arnold?

3 And who completed this excise tax return?

4 A That excise tax return was completed by Eric Shibley.

5 Q How are these excise tax returns -- how are they filed with
6 the State Department of Revenue?

7 A They're filed electronically through the state's My-ID web
8 portal.

9 Q If we can -- And how much was paid for excise taxes on this
10 particular page, this form?

11 A On that particular tax return, the amount of \$160.32 was
12 remitted.

13 Q Have you reviewed the rest of the exhibit, pages 19
14 through 31?

15 A Yes, I have.

16 Q Does that indicate that, for at least a time period, Eric
17 Shibley MD continued to file state tax returns?

18 A It does.

19 Q And could we show the last page of the exhibit, page 31? You
20 can blow up just the top half.

21 What is this page 31?

22 A Page 31 is a combined excise tax return for the period of
23 Quarter 3, 2019.

24 Q And what is the business?

25 A It's for the businesses Eric R. Shibley MD, PLLC.

1 Q And what does the -- this looks different than the previous
2 page we saw. Why is that?

3 A The Department transitioned from an antiquated filing system
4 to a more modern system during this time period. So that
5 resulted in a change to the filing portal.

6 Q For the third quarter of 2019, did Eric Shibley MD report
7 revenue?

8 A Yes, it did.

9 Q How much?

10 A \$13,000.

11 Q And did it pay taxes to the state?

12 A For that period, no.

13 Q And the previous pages in this exhibit, are they tax returns
14 from 2018 and the earlier quarters of 2019?

15 A They are.

16 Q During that timeframe, 2018 and 2019, did Shibley MD pay
17 state excise taxes?

18 A During that time period, no.

19 Q And why not?

20 A The business, during that time period, received a small
21 business credit. It's a tax credit. If revenues are below a
22 certain threshold, an organization or a taxpayer wouldn't have to
23 remit excise taxes.

24 Q So let's just look at page 30, please, to look at the revenue
25 amount.

1 So what is the revenue amount reported for the second quarter
2 of 2019?

3 A The gross revenue for that quarter was \$13,500.

4 Q And were taxes due?

5 A There was no tax due, due to the small business credit.

6 Q And let's go back to page 29, please, Mr. Arnold.

7 Is page 29 the first quarter tax return?

8 A That's correct.

9 Q And how much gross revenue was reported?

10 A The gross revenue of \$12,350 was reported.

11 Q And are taxes due on this amount?

12 A No, they are not.

13 Q Why not?

14 A That's due to the small business credit that was received.

15 Q All right. Let's take that down. Thank you, Mr. Arnold.

16 I'm going to show you now what's been marked as Exhibit 79.

17 And I'm going to ask Mr. Arnold to scan through this document to
18 the last document.

19 Is Exhibit 79 records of the Department of Revenue?

20 A Yes, they are.

21 Q What is the -- let's go back to the first page, please.

22 What is the business name?

23 A The legal entity on this exhibit, or for these records, is
24 SFC LLC.

25 Q Before we go on, Mr. Hillers, I neglected to ask you a

1 question about Eric Shibley MD, PLLC. The last filing we saw
2 reporting revenue was the third quarter of 2019, correct?

3 A That's correct.

4 Q Did you check the records to see if Eric Shibley MD filed
5 state tax returns after the third quarter of 2019?

6 A I did, approximately three weeks ago.

7 Q What did you find?

8 A I found that there were no further records.

9 Q Thank you, Mr. Hillers.

10 Back to Exhibit 79. Are these the business records
11 maintained in the Department of Revenue for a business SFC LLC?

12 A Yes, they are.

13 MR. WERNER: Offer Exhibit 79.

14 MR. NANCE: No objection.

15 THE COURT: Admitted.

16 (Exhibit No. 79 admitted.)

17 Q So we're going to now publish the first page of Exhibit 79.
18 Can we go to the page -- to page 4 of Exhibit 79, please? Did
19 this business change its name?

20 A The business did not change its name.

21 Q What is -- what does this indicate? What does this page
22 indicate?

23 A This page would indicate that they registered a tradename or
24 are doing business as Seattle's Finest Cannabis.

25 Q Okay. So what is the legal name?

1 A The legal name is SFC LLC.

2 Q Okay. And let's go to page 10, please.

3 Did this business, SFC LLC, file state excise tax returns?

4 A Yes, it did.

5 Q And what was the period that it filed state excise tax
6 returns?

7 A It filed state excise tax periods for the period of July 2018
8 through September of 2019.

9 Q There are entries here indicating time periods in 2019 and
10 2020, what does that indicate?

11 A For those periods of 2019 and 2019 -- excuse me, 2019 and
12 2020, they would show that no tax return was filed.

13 Q So the last tax return was filed approximately -- through the
14 period September 2019?

15 A That is correct.

16 Q And did you check the records of the Department of Revenue
17 recently?

18 A I did, approximately three weeks ago.

19 Q Any further state excise tax returns for this business?

20 A No, there were not.

21 Q Let's go to page 9, please.

22 What does page 9 indicate?

23 A Page 9 indicates that there were no tax penalties or interest
24 debits which occurred during the filing period range.

25 Q And did this business ever make payments, SFC LLC?

1 A No, it did not.

2 Q So can a business be required to file a return, even if money
3 is not owed?

4 A That is correct.

5 Q Why would that be?

6 A If a business maintains a license and tax registration, it
7 has a requirement to file and pay excise taxes. Even if there's
8 no activity during a taxable period, it has to report that to the
9 Department.

10 Q Let's take that down. Thank you.

11 Showing you now what's been marked as Exhibit 78. And have
12 you reviewed Exhibit 78 prior to coming to court?

13 A I have.

14 Q And what is Exhibit 78?

15 A Exhibit 78 are the Department of Revenue's records for ES1
16 LLC.

17 Q Were these records maintained in the regular course of the
18 Department of Revenue's business?

19 A They were.

20 MR. WERNER: Offer Exhibit 78.

21 THE COURT: Any objection, Mr. Nance?

22 MR. NANCE: No objection.

23 THE COURT: It will be admitted.

24 (Exhibit No. 78 admitted.)

25 Q So a business with the name ES1 LLC was registered with the

1 State Department of Revenue?

2 A Yes, it was.

3 Q Let's look at page 10, again, please, Mr. Arnold.

4 Did ES1 LLC file state excise tax returns?

5 A Yes, it did.

6 Q Let's go to page 9, please.

7 Did ES1 LLC pay state excise taxes?

8 A No, it did not.

9 Q What is the time period that it filed returns?

10 A It filed returns for the time period of annual 2017 through
11 annual 2019.

12 Q Did it pay state excise taxes during that time?

13 A It did not.

14 Q Why not?

15 A Those periods were reported as no activity.

16 Q Let's look at page 15, please.

17 Mr. Hillers, do you recognize page 15?

18 A I do.

19 Q What is this?

20 A This is a copy of correspondence mailed to the taxpayer by
21 the Department, concerning a reseller permit application.

22 Q Who, according to this letter, who applied for a reseller
23 permit application?

24 A That application was applied for by ES1 LLC.

25 Q And where was the letter sent?

1 A That was sent to 4700 36th Avenue Southwest, in Seattle,
2 Washington.

3 Q And what is a reseller permit application?

4 A A reseller permit application allows the business to be
5 considered for reseller permit. A reseller permit allows a
6 business to purchase goods, without paying sales taxes on those
7 goods, to be resold to the end customer.

8 Q What types of businesses would want a reseller permit?

9 A Generally any type of retail establishment or retail
10 business.

11 Q Why was the reseller permit application denied?

12 A According to the correspondence, the business was not
13 qualified for a reseller permit application.

14 Q Are there other notes in the Department of Revenue's file
15 that indicate why this letter was issued and why the permit was
16 denied?

17 A Yes, there are.

18 Q Let's look at page 12, please. Could we call out that top
19 section, please? What are we seeing here on page 12?

20 A We are seeing notes that are affiliated with the business.
21 These notes are made by Department of Revenue personnel.

22 Q And do these notes discuss this reseller permit application?

23 A Yes, they do.

24 Q According to these notes, why was the reseller permit
25 application denied for ES1 LLC?

1 A According to the notes, the application was denied as the
2 business had indicated that they were a speculative builder, and
3 they did not have a contractor's license with the Department of
4 Labor and Industries.

5 Q And L&I is an abbreviation in these records. What does that
6 stand for?

7 A That stands for the Department of Labor and Industries.

8 Q And so do you need a license with L&I to be a contractor?

9 A Generally, yes.

10 Q Why?

11 A That agency regulates different industries. One regulated
12 industry that they monitor is the contracting industry. They
13 have certain licensing, insurance and bonding requirements.

14 Q For contractors?

15 A That's correct.

16 Q In order to get a license, a contractor's license with L&I,
17 must a business first be registered with the Department of
18 Revenue?

19 A Yes.

20 Q So if a business doesn't have a business license with the
21 Department of Revenue, it necessarily doesn't have a contractor's
22 license with L&I?

23 A I would say that's correct.

24 Q Let's take this down. Thank you.

25 Did you check Department of Revenue records for registration

1 records for some other businesses?

2 A Yes, I did.

3 Q When did you last do that check?

4 A That check occurred last on October 18th of this year.

5 Q Did you check the Department of Revenue's records for a
6 business named A Team Holdings LLC, with an employer
7 identification number ending in 7088?

8 A Yes, I did.

9 Q What did you find?

10 A The Department of Revenue had no records for that entity.

11 Q So there was no business license for A Team Holdings?

12 A Right.

13 Q If a business isn't registered with the Department of
14 Revenue, that business wouldn't have a contractor's license with
15 L&I?

16 A That's correct.

17 Q What triggers the requirement that a business be registered
18 with the Department of Revenue?

19 A The triggering requirement for registration with the
20 Department of Revenue would be either a business that's engaged
21 in any sort of retail transaction, or for businesses that are
22 non-retail, annual activity beyond \$12,000.

23 Q So annual revenue. Does that mean annual revenue beyond
24 \$12,000?

25 A That's correct.

1 Q If a business had employees, would that business need to be
2 registered with the Department of Revenue?

3 A Generally, yes.

4 Q Why?

5 A If a business is registered with the Employment Security
6 Department, as part of that registration process, the Department
7 of Revenue receives the corresponding application. The
8 Department of Revenue would register that business as well. And
9 likely, if they're registering for employee-reporting purposes,
10 they're generating some sort of revenue.

11 Q So if a business has employees, it's likely generating
12 revenue; is that your testimony?

13 A Yes.

14 Q Did you check the Department of Revenue records for a
15 business named Dituri Construction, with an EIN ending in 8508?

16 A I did.

17 Q What did you find?

18 A The Department of Revenue had no records for that entity.

19 Q No licenses?

20 A No.

21 Q No reports of revenue?

22 A No.

23 Q Did you check the Department of Revenue records for a
24 business named SS1 LLC with an EIN ending both in 7509 and 2134?

25 A I did.

1 Q What did you find?

2 A The Department of Revenue had no records for that entity as
3 well.

4 Q And, again, if Dituri Construction and SS1 LLC are not
5 registered with the Department of Revenue, they do not have that
6 business license, they do not have a contractor's license with
7 L&I, correct?

8 A I think that would generally be correct. I don't have
9 information concerning L&I.

10 Q Did SS1 LLC have a business license with the Department of
11 Revenue?

12 A No, it did not.

13 Q Did Dituri Construction have a business license with the
14 Department of Revenue?

15 A No, it did not.

16 Q Did either entity report revenue to the Department of Revenue
17 at any time?

18 A No, they did not.

19 MR. WERNER: Thank you. Nothing further, Mr. Hillers.

20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MR. NANCE:

23 Q Good afternoon, Mr. Hillers.

24 A Good afternoon.

25 Q So is there generally open communication and sharing of

1 information between state departments?

2 A Yes. There are data-sharing agreements.

3 Q The Department of Revenue shares information; it gets
4 information from, say, its Secretary of State?

5 A Generally, yes.

6 Q Okay. So if a business wants to register as an LLC with the
7 Secretary of State, they are assigned a number, right, a UBI
8 number?

9 A That's correct.

10 Q Is that the same number that the Department of Revenue uses
11 to identify businesses?

12 A Yes. We use the UBI number.

13 Q That comes from the Secretary of State, then?

14 A Yes.

15 Q Okay. So if a business registers or certifies with the
16 Secretary of State, and they're issued a UBI number, wouldn't the
17 Department of Revenue generally know about it?

18 A The Department of Revenue system would show that there had
19 been a registration with that entity, and that it's been assigned
20 a UBI number.

21 Q Okay. So it's on your radar, at least?

22 A It would appear, yes.

23 Q Okay. Whether or not a formal license is obtained from the
24 Department of Revenue?

25 A That's correct.

1 Q So it's very possible, it sounds like, and may even have
2 happened in this case, that there were LLCs out there that had
3 been created and registered with the Secretary of State and
4 issued a UBI number, that Department of Revenue had on its radar,
5 knew about?

6 A Correct.

7 Q At least one of them, ES1 LLC, was, in fact, registered with
8 the Revenue Department?

9 A That's right.

10 Q And was -- was it licensed? Would that make it licensed, the
11 fact that it's registered?

12 A The fact that it was registered, generally applies to a
13 business license. So, yes, that entity did have a business
14 license.

15 Q So ES1 is registered and licensed with the Department of
16 Revenue?

17 A Correct.

18 Q And it's filing returns?

19 A That's correct.

20 Q Now, isn't it accurate that Washington State does not have a
21 state income tax?

22 A That is true.

23 Q Is it also correct that there is no corporate income tax?

24 A That is true as well.

25 Q The B&O, or business and occupation tax, is a sort of excise

1 tax?

2 A Yes.

3 Q Right?

4 A Yes, it is.

5 Q It's typically levied on personal service?

6 A It can be, yes.

7 Q Are construction services categorized differently?

8 A Construction services are categorized differently, depending
9 on the type of activity that the entity is performing.

10 Q Well, are construction services necessarily subject to the
11 B&O tax?

12 A Yes.

13 Q And that's not because they're retail, right? Retail
14 businesses are automatically subject to excise tax; is that
15 right?

16 A Correct. And with construction activities, if a contractor
17 is performing activities directly for the consumer -- so, for
18 instance, you hire a contractor to come to your home and complete
19 a repair, it's categorized as a retail transaction.

20 Q Where do you draw the line? Where does -- does it have to be
21 something bigger than just a homeowner having someone come out
22 and do renovation work?

23 A Where that would differentiate is whether or not a contractor
24 is performing activities for the end customer, or if they're
25 working for another contractor as a subcontractor. Then it would

1 differentiate the excise-tax classification.

2 Q And if they're working with a different contractor, is there
3 still an excise tax, or not?

4 A Yes.

5 Q Thank you.

6 THE COURT: Any redirect?

7 MR. WERNER: No, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: Put your mask back on, please.

11 MR. WERNER: The government calls Cynthia Cole.

12 THE COURT: You folks can stand up and stretch, if you
13 would like.

14 CYNTHIA COLE,

15 having been sworn under oath, testified as follows:

16 THE COURT: You can take your mask off.

17 THE WITNESS: Thank you.

18 DIRECT EXAMINATION

19 BY MR. WERNER:

20 Q Please state your name.

21 A Cynthia Cole.

22 Q Could you spell your last name?

23 A C-O-L-E.

24 Q You can take your mask off your ear, if you want. It's up to
25 you. Thank you.

1 Ms. Cole, where do you work?

2 A Employment Security Department.

3 Q Ms. Cole, could you maybe bring the microphone a little
4 closer to yourself, or yourself a little closer to the
5 microphone?

6 A Employment Security Department.

7 Q Great. What state Employment Security Department?

8 A Washington state.

9 Q How long have you worked at the Employment Security
10 Department?

11 A Twenty-two years.

12 Q What is your current position at Employment Security?

13 A Unemployment insurance, customer services, and integrity
14 manager.

15 Q What does that mean? What does that position entail?

16 A I work with -- I do -- I work with a lot of the appeals,
17 gathering of information. I work on Employment Security
18 Department claims.

19 Q And what positions did you hold, if any, prior to that
20 position?

21 A I started at the Employment Security Department in 1999 as an
22 intake agent. I have been a trainer. I was an adjudicator. I
23 was a disabled veteran's outreach program specialist. So I
24 worked with veterans to help them get reemployed. And I was the
25 adjudication manager for about ten years.

1 Q And in connection with your career at Employment Security,
2 are you familiar with the records maintained by the Employment
3 Security Department?

4 A Yes. Employment Security Department has three major
5 branches. One is tax and wage, who works with mainly the
6 employers and them paying taxes, quarterly taxes. Then we have
7 the reemployment side of the house, which most people know as
8 Work Source. And it has a variety of different programs to help
9 the unemployed become reemployed. And then I have spent most of
10 my career in the unemployment insurance part of the business,
11 which determines eligibility for people to get unemployment
12 insurance.

13 Q Thank you, Ms. Cole.

14 Let's talk about the first function, the tax-and-wage
15 function. What sort of information does the Employment Security
16 Department collect from employers in Washington State?

17 A They collect -- all employers in the state of Washington are
18 required to pay taxes on all their employees that work for them.
19 So they pay quarterly taxes. They collect the quarterly taxes.
20 They collect wage information, employees' names, their social
21 security number. And those wages get attached to, you know, when
22 they're ready to file for a claim so that they have money and
23 hours to be able to file a claim.

24 Q What's the name of the form that an employer files to report
25 this wage information?

1 A The quarterly wage form.

2 Q I will show you what's been marked as Exhibit 81. I'm going
3 to ask Mr. Arnold to go to the second page.

4 A The quarterly tax report, 5208.

5 Q And have you reviewed Exhibit 81 before coming to court
6 today, Ms. Cole?

7 A Yes.

8 Q Are these employer quarterly reports for a business called
9 Shibley MD?

10 A Yes.

11 Q Were they maintained in the records of Employment Security
12 Department?

13 A Yes.

14 MR. WERNER: Offer Exhibit 81.

15 MR. NANCE: No objection.

16 THE COURT: Admitted.

17 (Exhibit No. 81 admitted.)

18 Q Let's look at page 8, please, if we can. If that's -- and
19 perhaps let's call out the top quarter, or top third of the page
20 first. Thanks, Mr. Arnold.

21 So, again, what is this form that we're looking at here?

22 A It is a quarterly tax report from March 2017.

23 Q Is it March 2017, or does that "3" mean the quarter?

24 A Third quarter. Sorry, third quarter.

25 Q And what is the business name that's being -- that this tax

1 report is for?

2 A Shibley Medical Clinic.

3 Q What is the address?

4 A 4700 36th Avenue Southwest, Seattle, Washington, 98126-2716.

5 Q Thank you, Mr. Arnold. If we could go back and look at the
6 middle section there of the report.

7 Who is the preparer?

8 A Eric Shibley.

9 Q Thank you. If we could go to the next page, please?

10 What does this part of the report indicate?

11 A He's reporting total gross wages of \$2,000.

12 Q And you indicated when a business reports wages, what does
13 ESD or Employment Security do with that information?

14 A So every year Employment Security gives all of Washington
15 employers a tax rate. And so every year, they -- they do an
16 annual tax run. They get taxed based on how many employees they
17 have, their wages. And on a quarterly basis, businesses are
18 required to pay their quarterly taxes.

19 Q And so based on those rates, what is the amount of tax due to
20 Employment Security for this particular business?

21 A \$36.

22 Q And -- thank you. Let's go to Exhibit 81. Show Ms. Cole
23 Exhibit 81, please. I'm sorry, 80. Sorry.

24 Do you recognize Exhibit 80?

25 A Yes.

1 Q What is that?

2 A It is a letter saying -- from Dituri Construction, with an
3 employer identification number that doesn't exist in our system,
4 from January 1st of 2017 through March 31st of 2020.

5 Q Is this a certification of no records?

6 A Correct.

7 Q Offer Exhibit 80.

8 MR. NANCE: No objection.

9 THE COURT: Admitted.

10 (Exhibit No. 80 admitted.)

11 Q Could we call out the middle section, please, again? Just
12 the text, not the "sincerely," just the text. Thank you.

13 So, again, now that we all can see this document, what does
14 this document indicate about the records maintained for ESD for
15 Dituri Construction?

16 A There wasn't any.

17 Q So were any employer quarterly reports filed for Dituri
18 Construction?

19 A No.

20 Q Any wages reported for employees?

21 A No.

22 Q Let's look at -- actually, if you look in your binder, have
23 you reviewed documents Exhibits 82 through 86?

24 A Yes.

25 Q Are Exhibits 82 through 86 more certifications of no records?

1 A Correct.

2 Q And is Exhibit 82 for a business called SS1 LLC?

3 A SS1 and SS1 LLC.

4 Q Is Exhibit 83 ES1, a business named ES1?

5 A ES1 LLC.

6 Q And 84 is SFC LLC?

7 A 84 I have as Seattle's Finest Cannabis.

8 Q And what is the business for Exhibit 85?

9 A The A Team Holdings.

10 Q Is Exhibit 86 an EIN ending in 8805?

11 A Yes.

12 MR. WERNER: Offer Exhibits 82 through 86.

13 MR. NANCE: No objection.

14 THE COURT: Admitted.

15 (Exhibit Nos. 82 - 86 admitted.)

16 Q Just look at 82, please. Call out the text of the letter.

17 Ms. Cole, Exhibit 82 is on the screen now. What does this
18 indicate? What is the first page of Exhibit 82?

19 A That this employer identification number does not exist.

20 There were no wages reported, and no quarterly taxes paid on it,
21 from January 1st of 2017 through March 31st of 2020.

22 Q Is that true for the other businesses that we just mentioned?
23 Is that true for the ES1?

24 A Yes.

25 Q Exhibit 83?

1 A Uh-huh, correct.

2 Q Is that true for Seattle's Finest Cannabis, Exhibit 84?

3 A Yes.

4 Q Is that true for A Team Holdings, Exhibit 85?

5 A Yes.

6 Q And for the EIN ending in 8805, Exhibit 86?

7 A Yes.

8 Q Now, we have talked a little bit about -- you can take that
9 down, thank you.

10 We talked a little bit about what an employer reports. Is
11 information also maintained in the records of Employment Security
12 Department by employee?

13 A Yes.

14 Q How is that information maintained?

15 A Social security number.

16 Q And if you were provided a social security number, are you
17 able to search for reported wages for that employee for that
18 social security number?

19 A Yes.

20 Q Did Employment Security Department prepare some records as to
21 wages paid to certain Washington residents in this case?

22 A Yes.

23 Q Again, in the binder in front of you, are you familiar with
24 Exhibits 88 through 97?

25 A Yes.

1 Q And, generally, what is contained in Exhibits 88 through 97?

2 A A person's name, their social security number. That we were
3 not able to find wages for that individual. Yes, we were.

4 Sorry. So like, 88, we had -- they had wages from different
5 employers.

6 Q Let me just ask you, generally, Ms. Cole, are they all
7 searches run by the Employment Security Department for particular
8 names by particular social security numbers?

9 A Yes.

10 Q Do they all cover the time period of 2017 through first
11 quarter of 2020?

12 A Yes.

13 Q I'm going to show you now what's been admitted as Exhibit 48.
14 Could we go to page 3, please, Mr. Arnold?

15 Do you see the ten names listed on Exhibit 48, page 3?

16 A Yes.

17 Q Are those the same names that are in Exhibits 88 through 97?

18 A Yes.

19 MR. WERNER: Offer Exhibits 88 through 97.

20 MR. NANCE: No objection.

21 THE COURT: Admitted.

22 (Exhibit Nos. 88 - 97 admitted.)

23 Q Mr. Arnold, could we put Exhibit 91 on the screen, please?

24 Let's look at the second page of Exhibit 91. What are we
25 looking at with Exhibit 91, Ms. Cole?

1 A So it's saying first quarter of 2020, this individual worked
2 for Toyko Japanese Steakhouse.

3 Q And so this page covers multiple quarters, correct?

4 A Yes.

5 Q What is the individual's name?

6 A Muna, Jerome.

7 Q And, again, what business did Mr. Muna work for in this
8 period time?

9 A Tokyo Japanese Steakhouse.

10 Q What does this report indicate about the wages? Were they
11 reported to ESD?

12 A Yes. Let's see. First quarter of 2017. Second quarter,
13 third quarter, of 2017 again. And third and fourth quarter of
14 2018. And then for the full year of 2019.

15 Q Let's look at the next page. What is this page of
16 Exhibit 91?

17 A This is where the claimant -- well, Mr. Muna, filed for an
18 unemployment claim.

19 Q Was that claim granted?

20 A Yes.

21 Q And what would that claim be based on? In part -- would it
22 be based, in part, on the wages we saw on the second page?

23 A Yes.

24 Q And, again, explain to the jury the connection between wages
25 reported and unemployment compensation?

1 A Sure. Any time somebody becomes unemployed, they call us, we
2 ask for their social security number. So any wages that are
3 attached to that social security number, we have a formula that
4 we look at. They have to have at least 680 hours for a base
5 year, which is four quarters. And then we look at their wages to
6 determine their weekly benefit amount. It's the two highest
7 quarters added together, divided in half, multiplied by .04.
8 That's how they get their weekly benefit amount.

9 Q For Exhibit 91, did a business named SS1 LLC or Dituri
10 Construction report wages for this individual, Mr. Muna?

11 A No.

12 Q Let's look at Exhibit 92, please. This individual's name is
13 Eric Pula, correct?

14 A Yes.

15 Q Did the SS1 LLC or Dituri Construction report wages for Mr.
16 Pula?

17 A No.

18 Q Did you review -- what about the business name A Team
19 Holdings, did that business report?

20 A No.

21 Q Let's look at Exhibit 97. Go to the second page of 97,
22 please.

23 What is Exhibit 97, Ms. Cole?

24 A Reported wages for a Lisa Velotta.

25 THE COURT: Keep your voice up, if you will, please.

1 A Sure. Wages for a Lisa Velotta.

2 Q Are there wages reported by SS1 LLC or Ditur Construction?

3 A No.

4 Q What about the A Team Holdings?

5 A No.

6 Q What businesses are reported?

7 A Pacific Medical Centers in Puyallup, Steeb versus Overlake
8 Hospital Medical, and Pacific Medical Centers of Puyallup.

9 Q Ms. Cole, did you review all of these records 88 through 97
10 to see if any of these individuals had wages reported from Ditur
11 Construction?

12 A They do not.

13 Q I'm sorry. My question is, did you review them to see if
14 Ditur Construction is contained there?

15 A Could you say that again?

16 Q I could. I will.

17 Is Ditur Construction listed anywhere on Exhibits 88
18 through 97?

19 A No.

20 Q SS1 LLC?

21 A No.

22 Q A Team Holdings?

23 A No.

24 Q Seattle's Finest Cannabis?

25 A No.

1 Q ES1 LLC?

2 A No.

3 Q So for these individuals, none of them had wages reported by
4 those companies to ESD, correct?

5 A Correct.

6 Q So, again, you advised the jury about the second function of
7 Employment Security, and that's the unemployment insurance,
8 correct?

9 A Yes.

10 Q How are unemployment insurance payments in the state of
11 Washington, how are they funded?

12 A Employers only.

13 Q And could you be a little more specific? How do employers
14 pay in?

15 A They send in quarterly reports on all the employees that they
16 have, and their wages.

17 Q And are they required to pay unemployment taxes?

18 A Quarterly.

19 Q Did you review Exhibit 87?

20 A Yes.

21 Q And are these records of the Employment Security Department?

22 A Yes.

23 Q And did you review Exhibit 98?

24 A Yes.

25 Q Is Exhibit 98 also records of the Employment Security

1 Department?

2 A It is. This is where --

3 THE COURT: No, he's going to ask another question.

4 Q Again, let's go back to Exhibit 87. Who does Exhibit 87
5 relate to?

6 A Eric Shibley.

7 MR. WERNER: Offer Exhibit 87.

8 MR. NANCE: No objection.

9 THE COURT: Admitted.

10 (Exhibit No. 87 admitted.)

11 Q So we're looking at the first page of Exhibit 87. What does
12 this show?

13 A That there were wages reported, third quarter of 2017, for
14 \$2,000, and 180 hours.

15 Q And who is the reported employee?

16 A Eric Shibley.

17 Q And the last four of the social security number are listed on
18 this document as well?

19 A Yes.

20 Q Does that tie to a document we saw earlier in your testimony?

21 A Yes. That's on -- let's see, 98. We didn't originally have
22 any wages or hours. And so he -- so he was able to let us know
23 that he did actually report some hours and wages. And this is
24 what -- this is the form that he did that with.

25 Q So thank you, Ms. Cole. Let's take it one step at a time.

1 Did Mr. Shibley apply for unemployment payments with the
2 Employment Security Department?

3 A Yes.

4 Q And approximately -- well, what does the first thing the
5 Employment Security Department does when it gets an unemployment
6 insurance request, a claim?

7 A We look for wages.

8 Q And what wages did you find for Mr. Shibley?

9 A We originally didn't find any.

10 Q And are these wages in the Employment Security Department
11 system?

12 A They are now. From 2017, third quarter.

13 Q Thank you. And explain why -- was the unemployment claim
14 made in 2020?

15 A Yes.

16 Q So why wouldn't 2017 wages show up when you were processing
17 an unemployment claim for 2020?

18 A So we look at -- everybody's unemployment claim is based on a
19 base year. So if I file today, it would be current quarter.
20 Then the next four -- three months, next quarter is lag quarter,
21 which all the employers are paying their taxes on. And then your
22 base year is based on those next four quarters. And so we look
23 for wages on those four quarters. If you don't have the
24 680 hours, the person has the opportunity to file an alternate
25 base year, which includes the lag quarter. And then we would

1 have to request those wages from the employer to report early.

2 Q Let's look at page 2 of Exhibit 87. Did Washington State
3 make unemployment payments to Mr. Shibley in 2020?

4 A Not through a regular unemployment claim.

5 Q Okay. Why not through the regular -- why didn't Washington
6 State make regular unemployment payments to Mr. Shibley?

7 A He didn't have hours or wages.

8 Q And was there a different type of unemployment that Mr.
9 Shibley applied for in 2020?

10 A Yes. In 2020 the federal government -- Employment
11 Security -- I can't even think of the word. Based on the federal
12 government, we created -- we didn't create it, we just
13 implemented the pandemic unemployment assistance program. And so
14 the pandemic unemployment assistance program was for a lot of
15 people who didn't meet the 680 hours for regular employment.
16 They were considered underemployed. Self-employment. I mean,
17 the pandemic unemployment assistance really opened the doors for
18 many other people who are not normally considered eligible for
19 regular unemployment, to receive this pandemic unemployment
20 assistance.

21 Q Let's look at page 3, if we could, Mr. Arnold.
22 What does page 3 indicate?

23 A That he was paid pandemic unemployment assistance.

24 Q From what time? And what benefit weeks were covered?

25 A 5/9/2020, through -- oh, it started March 7th of 2020,

1 through May 9th of 2020.

2 Q What dates were these payments made?

3 A Let's see. Some were made -- well, most were made on
4 4/22/20. Then a couple were made on 4/30/2020. A couple on
5 5/4. And then the last two payments were made on 5/12.

6 Q Can we look at page 4, please, Mr. Arnold? Can we actually
7 go to page -- let's go to page 6, please.

8 Just closing the loop on this. What does page 6 indicate,
9 Ms. Cole?

10 A This is his original determination letter dated April 2nd of
11 2020, stating you may receive up to zero each week. You are
12 eligible for unemployment benefits. Your total amount -- I mean,
13 it's telling him he's not eligible for a regular unemployment
14 claim.

15 Q And so -- but he did receive pandemic unemployment
16 assistance, correct?

17 A Right.

18 Q And you indicated that the state Employment Security
19 Department administered the pandemic unemployment assistance?

20 A Yes.

21 Q Were applicants required to answer questions with the
22 Employment Security Department in order to get the pandemic
23 unemployment assistance?

24 A Yes.

25 Q Could we look at page 12, please? Is page 12 part of the

1 questions that an applicant -- that Mr. Shibley, as an applicant,
2 was required to answer to obtain pandemic unemployment
3 assistance?

4 A Yes.

5 Q Let's go down to page 11, please. I'm sorry, page 13.
6 Are these more questions?

7 A Yes.

8 Q And to the question: Are you getting paid for any period
9 after you last worked, such as severance pay, pay in lieu of
10 notice, or termination pay? What's Mr. Shibley's answer?

11 A No.

12 Q The question: Did you work for any employers whether you
13 have been paid or not? What's Mr. Shibley's answer?

14 A No.

15 Q And is that the answers Mr. Shibley gave to qualify for
16 Pandemic Unemployment Assistance, covering the March and April
17 and May time period that we looked at?

18 A Yes. We asked them these same questions every single week.

19 Q Let's look at page 14, please. What is reported -- Can we
20 call out the top section there?

21 What is reported here in response to the Employment Security
22 Department's questions?

23 A There's two employers, Eric Shibley MD and ES1 LLC. No hours
24 worked and no gross earnings.

25 Q When does he report the last day he worked for those

1 entities?

2 A 2/29/2020.

3 Q And does Mr. Shibley report working for any other entities?

4 A No.

5 MR. WERNER: Nothing further. Thank you, Ms. Cole.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MR. NANCE:

9 Q Hi, Ms. Cole.

10 A Hello.

11 Q I don't want to spend a lot of time on it, but I want to make
12 clear. This payment that you were just talking about was part of
13 the CARES package, wasn't it, CARES Act package that the state
14 was helping implement?

15 A Yes.

16 Q To help --

17 A The CARES Act.

18 Q To help self-employed people that were in trouble because of
19 the pandemic?

20 A Correct.

21 Q Let me call up Exhibit No. 48, page 3.

22 You were questioned at length about this list of individuals.

23 A Yes.

24 Q You were asked to run checks on each of them through your
25 system?

1 A Correct.

2 Q And as I understand your testimony, there was -- you found no
3 record of wages being reported, paid to any of these people?

4 MR. WERNER: Objection. It's mischaracterizes the
5 testimony.

6 THE COURT: Overruled.

7 A Could you say that again?

8 Q Well, I'm not trying to put words in your mouth.

9 A Yeah. I understand.

10 Q You looked at this, you ran a check through your system. And
11 if you could, just what did you find, and just, you know, ten
12 words or less, did you find there were no -- there was no record
13 of payments or of wages being reported?

14 A They had wages reported from employers.

15 Q They did?

16 A Some of them did, yes.

17 Q Was it your -- they had wages reported, but none through
18 these various entities?

19 A Correct.

20 Q Is that accurate? I'm not trying to mischaracterize it.

21 A Yes. Yes.

22 Q So you ran through the checklist of LLCs -- ES1, SS1, A Team,
23 et cetera -- and there was no record of these people receiving
24 any money, any wages, from those entities?

25 A Correct.

1 Q Okay.

2 Did any of these people apply for unemployment during this
3 period?

4 A I didn't look for that.

5 Q Okay. If these people, any of them, or all of them, had been
6 paid by these LLCs associated with Mr. Shibley, if they had been
7 paid in cash, it would not be surprising that you wouldn't have a
8 record of it, would it?

9 A Correct.

10 Q All right. Thank you.

11 THE COURT: Any redirect?

12 MR. WERNER: No, Your Honor.

13 THE COURT: You may step down.

14 MS. CONNELLY: The plaintiff calls John Moshier.

15 JOHN MOSHIER,

16 having been sworn under oath, testified as follows:

17 THE COURT: Go easy on my chair.

18 THE WITNESS: Yes, sir.

19 DIRECT EXAMINATION

20 BY MS. CONNELLY:

21 Q Good afternoon. Can you please state your name and spell
22 your last name for the record?

23 A John Moshier. M-O-S-H-I-E-R.

24 Q And where do you currently live, Mr. Moshier?

25 A I live in Westfield, New Jersey.

1 Q Where do you work?

2 A Ready Capital.

3 Q What is Ready Capital?

4 A Ready Capital is a nonbank lender, commercial lender.

5 Q And can you describe your role and responsibilities at Ready
6 Capital?

7 A I am the president and CEO of ReadyCap Lending, which is a
8 division of Ready Capital.

9 Q How long have you worked as the president and CEO of ReadyCap
10 Lending?

11 A Six and a half years.

12 Q And so in your role are you familiar with the customers of
13 ReadyCap?

14 A Yes.

15 Q And who are they?

16 A They're small business owners that are defined by the Small
17 Business Administration.

18 Q What types of services does ReadyCap offer those small
19 businesses?

20 A We provide access to capital through the 7(a) loan program.

21 Q What is the 7(a) loan program?

22 A The 7(a) loan program is a term loan program that is
23 administered by the Small Business Administration. So businesses
24 can, you know, borrow money to expand their businesses, buy
25 businesses, buy out partners, buy real estate. Things like that.

1 Q And so you have mentioned the Small Business Administration.
2 Are you familiar with the term "SBA lender" or "SBA-approved
3 lender"?

4 A Yes.

5 Q And what does that mean?

6 A That you, as an SBA-preferred lender, you're -- you have the
7 ability to interpret the regulations and make determinations on
8 eligibility on behalf of the Small Business Administration.

9 Q And so is ReadyCap an SBA-approved lender?

10 A Yes, we are.

11 Q And so, Mr. Moshier, are you familiar with the Paycheck
12 Protection Program, or the PPP?

13 A Yes.

14 Q And what is your understanding of the purpose of that
15 program?

16 A The PPP program was, you know, obviously passed in law by
17 Congress and the President at the time, and it was for the
18 purpose for employers to, you know, provide a paycheck or, you
19 know, payroll to employees to avoid layoffs.

20 Q And was that in response to the COVID-19 pandemic?

21 A Yes.

22 Q And what role did ReadyCap play, if any, with respect to the
23 PPP?

24 A Well, we were one of the, you know, preferred lenders in the
25 PPP program.

1 Q So if a prospective applicant was interested in applying for
2 a PPP loan, could they apply directly with ReadyCap?

3 A Yes, they could.

4 Q Did you need to be an existing ReadyCap customer to apply for
5 a PPP loan through ReadyCap?

6 A No, you did not.

7 Q So how would a prospective applicant apply for a PPP loan
8 with ReadyCap?

9 A We did have an online application at the time. We also
10 worked with some other -- through other sources to refer business
11 our way.

12 THE COURT REPORTER: Can you repeat the last part of
13 your answer?

14 THE WITNESS: Other referral sources that would use the
15 online application.

16 THE COURT REPORTER: Thank you.

17 Q And so was ReadyCap funding PPP loans?

18 A Yes, they were.

19 Q Did there come a time where Ready Capital entered into an
20 agreement with Customer's Bank, related to the PPP?

21 A Yes, we did.

22 Q And can you just describe that agreement to the jury?

23 A We entered into an agreement with Customer's Bank to acquire
24 some of the authorizations that we had acquired for the PPP
25 program. And they essentially became the funding source for

1 these PPP loans, and we became the lender service provider. So
2 we processed all the loans.

3 Q Okay. So, essentially, Ready Capital would receive the
4 applications on behalf of Customer's Bank?

5 A Yes.

6 Q Would Ready Capital approve the applications on behalf of
7 Customer's Bank?

8 A Yes.

9 Q And then would Customer's Bank fund the PPP loan?

10 A Yes.

11 Q And so at the time that agreement was struck, did
12 Customer's -- I think you have somewhat alluded to this, but I
13 just want to unpack it a little bit -- did Customers also buy PPP
14 loan numbers that Ready Capital had already gotten approved by
15 the SBA?

16 A Yes.

17 Q And can you just explain a little bit what it meant that
18 Customer's Bank bought PPP loan numbers?

19 A So the loan numbers were the authorizations that approved the
20 access to the PPP program for the small businesses. So we then
21 became the agent for those loans, and processed them on behalf of
22 Customer's Bank. So Customer's Bank then was the funding source,
23 and the owner of the customer at that point.

24 Q And so when was this agreement between Ready Capital and
25 Customer's Bank struck?

1 A That was April 28th of 2020.

2 Q Okay. And so on April 28th, had some applicants who ReadyCap
3 had already approved for PPP loans, but had not funded those
4 loans, already signed loan notes with Ready Capital?

5 A Yes, they did.

6 Q And so what happened to those applicants when Customer's Bank
7 bought their loan numbers?

8 A We issued a loan note in Customer's Bank name, and then
9 funded them through Customer's Bank.

10 Q Where are ReadyCap servers?

11 A In Berkeley Heights, New Jersey.

12 Q Is that where a signed ReadyCap PPP note would go?

13 A Yes.

14 Q Does ReadyCap have any servers in Washington State?

15 A No.

16 Q So where are ReadyCap servers?

17 A In Berkeley Heights, New Jersey.

18 Q Is that where a signed ReadyCap PPP note would go?

19 A Yes.

20 Q Does ReadyCap have any servers in Washington State?

21 A No.

22 Q So turning a little bit to the process, how would a
23 prospective applicant apply for a ReadyCap loan, or a
24 ReadyCap-approved but Customer's-funded loan?

25 A I'm sorry. Can you ask --

1 Q Yes. I'm sorry. That was a terrible question.

2 Turning to just the process, how would a prospective
3 applicant apply for a ReadyCap/Customer's Bank loan?

4 A It would apply through the website.

5 Q And that's the Ready Capital website?

6 A Yes. The ReadyCap website.

7 Q Once ReadyCap approves the loan, what happens then?

8 A Then we did the -- we do the due diligence on that and make
9 sure that it meets all the criteria.

10 Q And what does due diligence entail?

11 A Making sure that the applicant answered all the questions and
12 they certified the information as accurate, and true and
13 accurate.

14 Q And so -- and then after the due diligence is done, what
15 would the next step be?

16 A Funding. Signing of the note, and then funding.

17 Q Okay. And so would the Customer's Bank note, would ReadyCap
18 send the notes out to applicants, or did Customer's do that
19 themselves?

20 A No. Ready Capital sent the notes out to customers -- or,
21 yes, to customers on behalf of the Customer's Bank.

22 Q It's confusing with "customers" versus Customer's." Yes. So
23 would applicants ultimately sign a loan note with Customer's
24 Bank?

25 A Yes.

1 Q Can you just tell us, generally speaking, what type of
2 information ReadyCap asked applicants to submit in connection
3 with their PPP applications?

4 A Depending on the type of business, how they were structured,
5 we filed the guidance that was put out by the Small Business
6 Administration, and the Treasury. So depending on what type of
7 business it was -- and, actually, can you ask that question
8 again?

9 Q Yeah. Can you just tell us, generally speaking, what type of
10 information ReadyCap asked applicants to submit in connection
11 with their PPP applications?

12 A Yeah. All the necessary documents were put out in guidance
13 from the Small Business Administration, you know, driver's
14 license, photo.

15 Q And so who determined what type of information ReadyCap asked
16 for?

17 A Who determined?

18 Q Uh-huh.

19 A Well, we followed the guidance that the SBA put out to us.
20 So the determination was what was put out in guidance.

21 Q So the SBA was telling you what to ask for?

22 A Correct.

23 Q So I'm showing you Government's Exhibit 40, that's already
24 been entered into evidence. Do you recognize this form?

25 A Yes.

1 Q Okay. And who created this form?

2 A The Small Business Administration.

3 Q And so are the questions on this form the types of or the
4 questions that Ready Capital would ask prospective applicants?

5 A Yes.

6 Q In the Ready Capital/Customer's Bank relationship, who made
7 the determination to fund a PPP loan?

8 A Ready Capital did.

9 Q So was Customer's Bank relying on Ready Capital to do the
10 diligence required for each loan, as part of their agreement?

11 A Yes.

12 Q Did Customer's Bank do any of its own diligence?

13 A No, not on individual loans.

14 Q When you say "not on individual loans," would they do a
15 sampling of loans?

16 A Yes. They did an array of samplings.

17 Q Was it important to Ready Capital that applicants provide
18 truthful and accurate information in their applications?

19 A Yes.

20 Q And why is that important?

21 A Because we were relying on the certifications that were true
22 and accurate for us, or -- for them to be eligible for the PPP
23 program.

24 Q Was the program -- strike that. If we could just look at the
25 top portion of this, Mr. Arnold.

1 Would it matter to ReadyCap if a person applied for a PPP
2 loan using the name of a business that didn't actually exist?

3 A Yes, it would matter.

4 Q And why would that matter?

5 A Because they would not be eligible if the business doesn't
6 exist.

7 Q Right. And would it matter to ReadyCap if a business --

8 MR. NANCE: Those are leading questions, Your Honor.
9 Pardon me.

10 THE COURT: I'm sorry?

11 MR. NANCE: Leading questions.

12 THE COURT: Yes. Try to refrain from leading, counsel.

13 MS. CONNELLY: Okay. Sorry.

14 Q Would ReadyCap have approved a loan claiming -- if a business
15 claimed to have more payroll expenses than it actually had?

16 A Would a -- ask that again.

17 Q Would Ready Capital have approved a PPP loan if a business
18 applied claiming to have more payroll expenses than it actually
19 had?

20 A If they were certifying it and they provided the necessary
21 documentation, we had to rely on the certification by the
22 business owner.

23 Q Okay. Would it have mattered to Ready Capital if a business
24 applied -- Strike that.

25 Would it matter to ReadyCap if a business applied for a PPP?

1 MR. NANCE: Objection. Leading.

2 THE COURT: I haven't heard the question.

3 Q Would it matter to ReadyCap if a business applied for a PPP
4 loan, claiming to have more employees than it actually had?

5 A Yes, it would matter.

6 MS. CONNELLY: Can I continue, Your Honor. Okay.

7 Q And why would that have mattered?

8 A Well, if they were applying -- if they were stating they had
9 more employees, that would be inaccurate information that they
10 were certifying.

11 Q And was it a requirement of the PPP that a business have
12 employees, to get a PPP loan?

13 A Yes.

14 Q Would it matter to ReadyCap if a business applied for a PPP
15 loan, claiming to have more payroll expenses than it actually
16 had?

17 A Yes.

18 Q And why would that matter?

19 A Because they wouldn't have been eligible, based on the
20 certification that they provided.

21 Q And was the amount of the loan tied to the monthly payroll
22 amount?

23 A Yes, it should.

24 Q And so if someone applies claiming to have more monthly
25 payroll, what would that mean for the loan amount?

1 A It would mean it would be larger than what they were eligible
2 for, based on their certification.

3 Q If we could blow out, Mr. Arnold, and look on Question 5, in
4 the italics above it.

5 Would it matter to Ready Capital if a person who applied for
6 a PPP loan had lied on Question 5 about being on active
7 probation?

8 MR. NANCE: Objection, leading.

9 THE COURT: Overruled.

10 A Well, yes.

11 Q I'll answer -- or, I'll tell you the question once more.

12 But would it matter to ReadyCap if a person who applied for a
13 PPP loan had lied on Question 5 about being on active probation
14 at the time of the application?

15 A Yes.

16 Q And why would that matter?

17 A Well, if they would be ineligible, we wouldn't have funded
18 the loan.

19 Q And why was it ineligible?

20 A Because they answered incorrectly -- or they answered, yes.
21 And it clearly states if the answer is yes, the loan will not be
22 approved.

23 Q Would ReadyCap have approved a PPP loan if it learned that a
24 business that lied about its payroll numbers or employees or
25 probation status, had been funded a loan?

1 A No.

2 Q What steps, if any, would ReadyCap take if it learned that a
3 business that lied about its payroll numbers or probation status
4 or employees, had been approved for a loan?

5 A We would have tried to collect the money back, and then
6 notify the necessary authorities.

7 Q And would it matter to ReadyCap if a person who applied for a
8 PPP loan provided fake tax forms as supporting documentation for
9 the loan?

10 A Yeah. It would matter.

11 Q And why would that matter?

12 A If they were certifying that these are true and accurate, and
13 if they're not, then they were certifying falsified documents.

14 Q And was there something in particular about the PPP program
15 that made relying on borrowers so important?

16 A Yeah. Well, this -- well, when the program was put out, it
17 would put the onus of the small business owner to certify that
18 these are, you know, accurate and truthful statements.

19 Q And was there something in particular about the nature of the
20 PPP that made the program have to rely on the borrower so
21 heavily?

22 A Yeah. I mean, there was obviously -- and we all remember at
23 the start of the pandemic, there was just a lot of activity going
24 on. And this was a way for the government to get as much help to
25 small businesses, you know, during this time of shutdown.

1 Q Would ReadyCap have approved a PPP loan, if it learned that a
2 business had provided fake tax forms as supporting documentation?

3 A No.

4 Q Would ReadyCap fund a PPP loan, if it learned that a business
5 had lied -- actually, strike that.

6 What steps, if any, would ReadyCap take if it learned that a
7 business made false statements on its loan application or
8 provided fake tax forms, and had actually been approved for a
9 loan?

10 A We wouldn't have funded the loan.

11 MS. CONNELLY: Thank you. No further questions.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MR. NANCE:

15 Q Good afternoon, Mr. Moshier.

16 A Yes.

17 Q So you are the CEO of Ready Capital?

18 A ReadyCap Lending, which is a division of Ready Capital.

19 Q Okay.

20 A Uh-huh.

21 Q You described yourself as a service provider to Customer's
22 Bank or Ready Capital?

23 A A lender service provider, yes.

24 Q Was this your -- was this how you would have described your
25 business before COVID?

1 A Described my business before --

2 Q Well, your business is described as a service provider to
3 Customer's Bank, was that the case before the COVID pandemic?

4 A Well the PPP program didn't exist before COVID.

5 Q Well, that's -- and so, what did Ready Capital do before
6 COVID?

7 A We are a licensed SBA nonbank lender. We are regulated by
8 the Small Business Administration.

9 Q Okay. So you are lending to small businesses?

10 A Yes.

11 Q You've described taking PPP loan applications online?

12 A Yes.

13 Q And it sounds like in April of 2020, right after -- not long
14 after the CARES Act actually passed, that your bank -- you don't
15 call yourself a bank -- but your business, your lending service,
16 ended up with more loan applications than it could fund; is that
17 accurate?

18 A Correct.

19 Q And so you made a deal with Customer's Bank to sell them the
20 right to fund the loans?

21 A Yes.

22 Q And you cleared this with the SBA?

23 A Yes.

24 Q I assume you cleared -- you worked out something on the
25 fee-sharing arrangement on the lending fee that you would get

1 from SBA?

2 A Yes. Yes.

3 Q Was the surplus of the loan applicants and your inability to
4 fully fund them, something that you anticipated?

5 A No.

6 Q Well, Ready Capital is not a non-profit, it's a for-profit
7 organization?

8 A Yes.

9 Q You're a business. You are looking to do business out there?

10 A Yes.

11 Q And this was an opportunity?

12 A Yes.

13 Q So Ready Capital, you didn't ultimately fund the loans, the
14 ones that you passed on. But you screened the applicants; is
15 that right?

16 A Ask that question again.

17 Q You took the loan applications from the PPP applicants, or
18 PPP loan applicants?

19 A Yes.

20 Q And if there was any due diligence, it would have been Ready
21 Capital doing it?

22 A Correct.

23 Q Did you require a -- well, what did you require, other than
24 that template that we've seen described, the SBA two-page form
25 that you have testified about. Was there anything else that you

1 -- that Ready Capital required from applicants for PPP loans?

2 A Well, we required the documentation that was provided by the
3 Small Business Administration for the applicants to fill out, to
4 include any, you know, proof of payroll, in whatever form that
5 would be, based on the type of business. And a copy of a
6 driver's license with a picture. Is that what you're asking me?

7 Q Yeah. What did you do to verify or to check on the
8 applicants, essentially?

9 A Can you ask that question again?

10 Q Did you contact references? Did you ask for references?

11 A We did a Secretary of State's verification. We also did a
12 KYC KYB check on each customer.

13 Q Did you visit the worksite of the business or the business
14 office?

15 A No.

16 Q Did you require a 941 form? Did you ask for that?

17 A If the business was a certain, you know, type of filing yes,
18 we would.

19 Q If a business were seriously delinquent in its taxes, would
20 that have been a factor in granting or declining the loan, under
21 the PPP program?

22 A We didn't verify whether anybody was delinquent on their
23 taxes.

24 Q What if it was obvious, in the material that they provided to
25 you?

1 A If it were obvious?

2 Q Yeah.

3 A I mean, that's kind of a hypothetical question.

4 Q Okay. Let's call up Exhibit No. 1, page 5.

5 MS. CONNELLY: Objection, Your Honor. I think this goes
6 into the negligence territory.

7 THE COURT: Overruled.

8 Q Now, this is -- let me just tell you up front, this is not a
9 form that Ready Capital had anything to do with. It's a
10 representative sample, is all.

11 A Correct. Okay.

12 Q So page 5. Yeah, that's fine. If you could blow that up
13 just a little bit. So does -- Are you familiar with this form?
14 It's a Form 941?

15 A Yes.

16 Q And you'll notice -- and, again, this is just a sample. This
17 is not something you did. But if you will notice, lines 1 and 2
18 -- line 1 refers to the number of employees, and line 2 refers to
19 wages and tips within that particular quarter.

20 Is this the kind of document that Ready Capital would request
21 from an applicant and scrutinize when it came in with the
22 application?

23 A Yes.

24 Q Okay. Let me take you down to the lower part of this. In
25 fact, you could keep -- sort of just blow up the first -- from

1 lines 1 through the bottom there.

2 So if you look at line 2, which shows a wages and tips for
3 the quarter, paid by this particular business, and then you look
4 down at the line 10, total taxes due. You see that?

5 A Yes.

6 Q And wouldn't that appear to be simply derived by a formula?
7 You take the wages and multiply it by a couple of numbers in 5a
8 and 5c, and then subtract that to get the taxes that would be
9 normally due?

10 A I'm not an accountant.

11 Q I understand.

12 A Yeah.

13 Q I'm not holding you to that, to that standard.

14 A Yeah. It appears that's what that --

15 Q Well, if you look on it, at line 13, which indicates -- it's
16 a blank line referring to total deposits in payment toward that
17 obligation.

18 A Uh-huh.

19 Q Then you see line 14, a tax balance due of \$149,175. Do you
20 see that?

21 A Yes.

22 Q Yeah. So if Ready Capital got a PPP loan application with
23 something roughly similar to this filing, with the application,
24 is that something that would trigger a rejection, or is it
25 something that you would just follow up on? Or it's something

1 that you wouldn't -- is there anything about this that you feel
2 would be a factor in evaluating a PPP loan applicant to Ready
3 Capital?

4 MS. CONNELLY: Objection, Your Honor.

5 THE COURT: I will permit a limited amount of this.

6 MR. NANCE: Okay.

7 A This is a borrower's certification loan process. So if the
8 applicant submitted this 941 as proof of payroll, and certified
9 that this payroll matches what they are eligible for, they're
10 certifying this. And we would look at the fact that they had
11 verification, that they had payroll.

12 Q Okay.

13 A I don't know the authenticity of whether this is valid or
14 not.

15 Q I understand that.

16 THE COURT: One at a time, please.

17 Q I guess what I'm curious about is whether the fact that there
18 appears to be a significant tax delinquency on the face of this
19 document, right? They owe \$149,000 in taxes that they haven't
20 paid yet. Would that be a factor in considering whether an
21 applicant was properly eligible for the funds?

22 A I don't know.

23 Q You don't know? Okay.

24 THE COURT: All right. Let's take 15 minutes.

25 THE CLERK: Please rise. Court is in recess.

1 (Recessed.)

2 THE COURT: So Mr. Moshier, I assume you have noted the
3 sunshine outside. When you go back to New Jersey, you tell them
4 that the sun always shines in Seattle.

5 THE WITNESS: Will do, sir.

6 THE COURT: Let's bring in the jury.

7 MR. WERNER: Your Honor, just briefly. We wanted to let
8 the court know, and we let Mr. Nance know, we're ahead of
9 schedule. And we believe, at this point we believe the
10 government will rest perhaps early Thursday, we could be done as
11 early as tomorrow afternoon. But I just want to make sure the
12 court knows. Hopefully I'm not speaking too soon.

13 THE COURT: We will get the instructions to you probably
14 first thing tomorrow morning.

15 MR. WERNER: Thank you, Your Honor.

16 THE COURT: All right. Let's bring in the jury.

17 (The following occurred in the presence of the jury.)

18 THE COURT: Please be seated. Any objection to
19 informing the jury of what we just discussed?

20 MR. WERNER: No, Your Honor.

21 MR. NANCE: No.

22 THE COURT: It appears the case is moving faster than we
23 had thought it might. And there's a real good shot at the case
24 being submitted to you before the end of this week.

25 All right, Mr. Nance.

1 MR. NANCE: Yes.

2 Q (By Mr. Nance) Mr. Moshier, wouldn't it be that qualifying
3 for a PPP loan was easier than for a traditional loan, SBA-type
4 of loan?

5 A Yes.

6 Q And this is in large part because the PPP applicants make
7 their own representations on the applications?

8 A Yes.

9 Q A traditional loan would be subject to greater scrutiny by
10 the bank, wouldn't it?

11 A Or the lender.

12 Q Or the lender.

13 Verification procedures might be easier, or a little -- not
14 as strict, certainly for a PPP?

15 A Yes.

16 Q And the loan process would be considerably shorter than for a
17 traditional loan?

18 A Yes.

19 Q Of course, this surely mattered a little less to you, or to
20 your business -- I'm sorry, you are not a bank. What, you're a
21 service -- lending-service business, is that it?

22 A We are a licensed SBA nonbank lender, which is regulated by
23 the Small Business Administration.

24 Q Okay. Operative word is "lender."

25 A Yes.

1 Q These considerations, credit considerations that you would
2 normally apply toward a borrower, probably mattered less with the
3 PPP, because ultimately the loan is guaranteed, right?

4 MS. CONNELLY: Objection, Your Honor.

5 THE COURT: Overruled.

6 Q This is a guaranteed loan. You, as the lender, cannot lose,
7 right?

8 A The guarantee, that is full faith by the Small Business
9 Administration and the United States Government, yes.

10 Q Your marketing, you know -- your marketing lending service
11 for the PPP, you know it's ultimately going to be, if it's
12 funded, it's going to be guaranteed. And you and Customer's Bank
13 share a lending fee, a funding fee?

14 A Correct.

15 Q Right.

16 This is a golden goose; isn't it?

17 A A golden goose?

18 Q This is a golden goose. You have got to pursue this one.
19 This is a lucrative situation, isn't it, for the bank, for the
20 lender?

21 A It's not how I saw it at the time.

22 Q You didn't see it that way?

23 A Not at the time. We were in a pandemic.

24 Q Sure. What percentage of your lending business was comprised
25 of PPP loans in 2000, would you estimate?

1 THE COURT: In 2000?

2 MR. NANCE: I'm sorry, in 2020.

3 A In 2020?

4 Q Yes.

5 A I could point you to our annual review. I mean, we do -- we
6 are a publicly traded entity. You can take a look at that stuff.

7 Q How many PPP loans did Ready Capital process?

8 A 100,000, give or take.

9 Q Aren't you really largely earning a fee in the neighborhood
10 of three or four percent, right off the top?

11 A In some cases, yes.

12 Q Well, it sounds like a lot of money to me. It sounds like a
13 lot -- a lucrative business opportunity that you would pursue
14 with all diligence and energy.

15 A Is that a question?

16 Q Yes.

17 A What's the question?

18 Q Didn't you actively pursue this? Wasn't this something that
19 you were in enthusiastic pursuit of? You marketed these PPP
20 loans aggressively, right?

21 A We marketed them, yes.

22 Q Well, to the point where you ended up with a big surplus of
23 potential borrowers, beyond your ability to fund?

24 A We processed over 100,000 PPP applications. We answered the
25 call that was put out by the United States Congress to get money

1 out the door, in the hands of small business owners, to keep
2 their employees employed.

3 Q Well, it mattered to you what was on the applications,
4 because you believed it mattered to the SBA, right?

5 A I'm not following.

6 Q You were asked a string of questions about whether it
7 mattered -- would it matter if the person, you know, was on
8 misdemeanor probation. Would it matter if they overstated their
9 number of employees. And you agreed that it would have mattered?

10 A Yes.

11 Q Because it mattered to the SBA?

12 A Not just the SBA, the United States Congress, Senate, the
13 President of the United States.

14 Q Mr. Moshier, you have got a really good thing going through
15 the SBA, don't you? And you don't want to mess that up.

16 A Excuse me?

17 Q I will withdraw the question.

18 THE COURT: Any redirect?

19 MS. CONNELLY: Nothing, Your Honor.

20 THE COURT: You may step down. Put your mask on,
21 please.

22 MR. WERNER: The government calls Adam Seery.

23 ADAM SEERY,

24 having been sworn under oath, testified as follows:

25 MR. WERNER: You may remove your mask.

1 THE WITNESS: Thanks.

2 DIRECT EXAMINATION

3 BY MR. WERNER:

4 Q Please state your name and spell your last name.

5 A Adam Seery. S-E-E-R-Y.

6 Q Mr. Seery, what city and state do you currently live in?

7 A I live in Encinitas, California.

8 Q Mr. Seery, have you spent any time in Seattle?

9 A Yeah. I used to go to school at the University of
10 Washington.

11 Q Mr. Seery, where do you currently work?

12 A I work at Harvest Small Business Finance.

13 Q How long have you worked at Harvest Small Business Finance?

14 A Six years.

15 Q What is your role there?

16 A I'm a chief operating officer.

17 Q And how long have you been the chief operating officer?

18 A Three years now.

19 Q What is your job duty? What is your job description as the
20 chief operating officer?

21 A I oversee all of operations.

22 Q Well, what are the operations of Harvest?

23 A So Harvest is a nationwide nonbank SBA lender. So we hold --
24 there's 14 nonbank SB -- they're called SBLC licenses. What that
25 does is it affords us to lend on behalf of the government without

1 being a bank. So typically we make SBA 7(a) loans, mostly
2 commercial real estate driven.

3 Q Okay. And what's an SBA 7(a) loan?

4 A A SBA 7(a) loan is one of the two loans that are backed by
5 the federal government, in terms of the government-guaranteed
6 program.

7 Q Again, what type -- who is your typical customer? Are we
8 going too fast? We're going way too fast. Sorry.

9 A I can go fast. Sorry.

10 Q And what is Harvest's typical customer?

11 A Harvest's typical customer is mom-and-pop shops across the
12 country. Anywhere from one to couple of hundred employees. Loan
13 amounts up to \$5 million.

14 Q And what type of loans do you typically extend these
15 businesses?

16 A For us, for Harvest -- you know, SBA is, you know, you can do
17 it for any various business purposes. Harvest focuses on
18 commercial real estate. So, you know, if a borrower wanted to,
19 you know, a restaurant owner want to buy or refinance their
20 building they currently occupy, that would be a loan that we
21 could consider for them.

22 Q Does Harvest manage the loans that they make?

23 A We do. We fund and service all of our loans that we book.

24 Q Mr. Seery, are you familiar with the Paycheck Protection
25 Program?

1 A Yes.

2 Q And what was Harvest's involvement in the Paycheck Protection
3 Program or PPP?

4 A Having one of the fourteen licenses that allows us to lend on
5 behalf of the government, we were instantly eligible to make
6 loans under the PPP program.

7 Q And what was the purpose of the PPP, to your understanding?

8 A The purpose of the PPP program was to get money out to
9 much-needed small business owners, as soon as possible, to help
10 them keep people employed, employees employed, through the
11 program.

12 Q And did Harvest offer PPP loans in 2020?

13 A Yes.

14 Q Did they offer in the time period of April to June of 2020?

15 A Yes.

16 Q Did the PPP applicant need to be an existing Harvest
17 customer?

18 A At the beginning, our biggest objective was to get money to
19 our existing customers, to help them. It was, as you could
20 imagine, everyone was drinking from the fire hose at the very
21 beginning of this program. As we were getting through our
22 existing clientele, we saw the need to help outside customers
23 obtain loans as well, just due to the overflow from the big
24 banks. Wells Fargo, B of A, Chase.

25 Q So did there come a time where Harvest offered or accepted

1 PPP applications from non-Harvest customers?

2 A Yes.

3 Q And, Mr. Seery, how would an applicant apply for a PPP loan
4 with Harvest?

5 A We had an online portal that you could get through our
6 website.

7 Q And who reviewed the information, once it was input into the
8 website?

9 A So once the required information was input into the website,
10 we transformed our team of, you know, credit officers and loan
11 closers to essentially PPP underwriters. And after a loan was
12 submitted, one of those individuals would take down the loan and
13 start to work on it.

14 Q So did this become -- did this become a big part of Harvest's
15 business in the spring of 2020 timeframe?

16 A We fully shut down all of our core operations to help get
17 these loans out as soon as possible.

18 Q Where are the Harvest employees located that reviewed these
19 PPP applications?

20 A Laguna Hills, California.

21 Q And so would an application being sent from Washington be
22 reviewed by a Harvest employee in California?

23 A Yes.

24 Q And that would be sent by the internet?

25 A Yes.

1 Q What about e-mails. Did your loan team e-mail with
2 applicants?

3 A Yes. So if the loan application was not complete or we
4 needed additional information, one of our PPP processors would
5 reach out directly to a borrower, either by e-mail or by phone.

6 Q And, again, to the extent that there was an e-mail sent to a
7 Harvest employee or a loan processor, where would that e-mail be
8 received?

9 A In Laguna Hills.

10 Q And, again -- so that would create an interstate wire
11 transmission from the place of the borrower to California; is
12 that correct?

13 A Yes.

14 Q In general, what type of information was a PPP applicant
15 required to provide?

16 A The information that was required was a 2483 application, the
17 PPP application is what it was called. You know, identification
18 verification. Payroll documentation, whether that be a 941 or
19 like an ADP statement, or some sort of payroll document.

20 Q Who prepared -- you said that 2483, is that the form you
21 gave?

22 A Yep. Yep.

23 Q Whose form is a 2483?

24 A That was the SBA PPP form that was created by Treasury and
25 the SBA.

1 Q So who created the guidelines for the PPP program?

2 A The Treasury Department in conjunction with the SBA.

3 Q So again, you indicated that employee and payroll information
4 needed to be provided; is that correct?

5 A Yes.

6 Q And supporting documents. I think you described two
7 different types of supporting documentation. What were those?

8 A The 941 form, which is a tax document, that basically showed
9 your employee, the employee payroll you had. Or the actual
10 historical payroll documents from a third-party payroll provider,
11 if you used one.

12 Q What's an example of a third-party payroll provider?

13 A Like an ADP, or someone of that nature.

14 Q And who made the determination whether or not a loan, a PPP
15 loan, qualified?

16 A Well, it was a borrower-certified program. So they would
17 fill out all the information. And then it was up to us to just
18 make sure that those mirrored one another, ie: the application
19 employee's loan amount mirrored what showed up on their 941 or
20 payroll documentation.

21 Q And if the two matched, was the loan typically granted?

22 A Yes.

23 Q And how was the money transferred, then? How was the money
24 funded by Harvest?

25 A We sent out ACH transfers.

1 Q So for the PPP applications that Harvest received, what was
2 important on those applications?

3 A Well, all of the certifications were important, along with
4 the -- you know, obviously the amount of employees and the
5 payroll information, the loan amount they were requesting.

6 Q Why was the number of employees, why was that important to be
7 accurate?

8 A Because their loan amount was determined by the amount of
9 employees that they had.

10 Q What about the payroll amount, why was that important to be
11 accurate?

12 A The payroll amount basically validated how many employees
13 that they had.

14 Q Did the payroll amount tie to the amount of the PPP loan that
15 was eventually granted?

16 A Yes.

17 Q What was the relationship between the monthly payroll and the
18 amount of the PPP loan?

19 A So the way the payment was calculated was, you took the
20 full-time employees you had, their wages up to \$100,000, you, on
21 an annualized basis, divided that by twelve and multiplied by
22 two-and-a-half times. And that was your overall loan amount that
23 a borrower could qualify for.

24 Q Was it important that all questions on the form be answered
25 truthfully and accurately?

1 A Absolutely.

2 Q And what about the supporting documentation? Was it
3 important to Harvest that supporting documentation also be
4 truthful and accurate?

5 A Yes.

6 Q Why?

7 A Because that's all we had to rely on in this program.

8 MR. WERNER: Thank you, Mr. Seery. No further
9 questions.

10 THE WITNESS: Thank you.

11 CROSS-EXAMINATION

12 BY MR. NANCE:

13 Q Good afternoon, Mr. Seery.

14 A Good afternoon.

15 Q You are the CEO of Harvest?

16 A Chief operating officer of Harvest.

17 Q Chief operating officer?

18 A Yep.

19 Q Excuse me.

20 A Also a principal.

21 Q How long have you been with Harvest?

22 A Six years.

23 Q And prior to the pandemic, what did Harvest primarily do?

24 A Commercial real estate SBA loans.

25 Q With the onset of the pandemic, and the PPP program, I think

1 I heard you say that you shut down other loan programs to focus
2 on PPP; is that right?

3 A Yes. So we shut down our core business of funding commercial
4 real estate loans, to focus on PPP, just due to the fact that it
5 was a high-volume program.

6 Q During the year 2020, how many PPP loans would you estimate
7 Harvest funded?

8 A 5,200, approximately.

9 Q Do you know how many applications you screened?

10 A Well over 8,000 or 9,000.

11 Q And of those you funded, what would be the -- I'm just
12 looking for an estimate here -- gross amount of PPP loan funds
13 funded?

14 A What was the question?

15 Q During the year 2020, what was the aggregate amount of the
16 PPP loans that Harvest funded?

17 A Dollar-wise?

18 Q Yes.

19 A 1.2 billion.

20 Q What was the Congressionally mandated funding fee that you
21 would have earned on that?

22 A Well, there was three different levels of the fee. It was
23 5 percent up to \$350,000, three percent from \$350,000 to
24 \$2 million. And then it was 1 percent from \$2 million to
25 \$10 million.

1 Q What were the bulk of these 5,200 loans?

2 A Average loan size was around \$200,000.

3 Q So 5 percent would have been the typical fee you would have
4 made?

5 A Five percent, correct.

6 Q Yeah.

7 I'm sure you have done the numbers at some point. Do you
8 know what you earned in fees, Harvest earned in fees in total?

9 A In 2020? I don't. I don't recall.

10 Q Well, I mean, I could do some very quick math here.
11 \$1.2 billion times 4 percent, which is less than 5, would be, I
12 don't know, have I got this right, \$50 million, \$60 million?

13 A Somewhere in there. It sounds about right.

14 Q Would you characterize this period as a bit of a funding
15 frenzy among -- and let me clarify it a little bit -- funding
16 frenzy among lenders like Harvest?

17 A I wouldn't say "frenzy." What I would say is we had a short
18 period of time to help a lot of customers, just due to the amount
19 of funding and the amount of demand for PPP loans.

20 Q So a high demand, a relatively short period in which to meet
21 it, and at least, in theory, a finite amount of ultimate money to
22 be accessed?

23 A Yes. I mean, getting back to my point before, we screened
24 8,000 or 9,000 loans, but ultimately couldn't make it to the
25 finish line on a majority of those, because we just didn't have

1 the time.

2 Q Didn't have the time to do it?

3 A Didn't have the time, before funding ran out.

4 Q Well, there was money, I believe, at the end of the initial
5 funding period in August 2020, there was still money to be had.
6 Do you know differently?

7 A I believe that's correct.

8 Q So was it the program ran out of money, or the time ran out?

9 A The program time ran out. The first funding, if you recall,
10 the initial batch went pretty quickly. And they had to go back
11 to Congress to get an additional funding requirement. And that
12 was the one that lasted beyond. But by that time, a lot of the
13 loans that we had screened had gotten done elsewhere.

14 Q The applicants came to you. They're probably applying
15 elsewhere as well. And the other place gets approved and funded
16 before you could get to it?

17 A Correct.

18 Q Sounds like it's pretty competitive. I have used the word
19 "frenzy," but it's a competitive market to be sure?

20 A Well, again, not competitive. Borrowers were just searching
21 for the easiest path of resistance to get their money, right?
22 Because if they couldn't get it from B of A, and they went to
23 Harvest and we had a backlog, then they would just go to the next
24 person until they could get the loan, worrying that they were not
25 going to have access to the funds before the program ran out.

1 Q So you funded 5,200. But there was as many as 9,000 that
2 applied. What's the difference there, 40 -- 3,800. Of those
3 3,800, how many were rejected by Harvest, as opposed to your just
4 not being able to get to them to service them, to fund them?

5 A I don't have that information.

6 Q Do you have any estimate of how many would have -- how many
7 loan applicants were just turned down, just --

8 A Again, don't recall.

9 Q Okay. Thank you.

10 MR. WERNER: Nothing further, Your Honor. Thank you.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Put your mask back on, please.

14 MS. CONNELLY: And the government calls Nissen Liddiard.

15 NISSEN LIDDIARD,

16 having been sworn under oath, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CONNELLY:

19 Q Good afternoon. Can you please state your name and spell
20 your last name for the record.

21 A Yes. Nissen Liddiard. L-I-D-D-I-A-R-D.

22 Q And where do you currently live, city and state?

23 A Stansbury Park, Utah.

24 Q Where do you work?

25 A Celtic Bank.

1 Q What is Celtic Bank?

2 A It's a Utah-chartered industrial bank.

3 Q And is Celtic Bank FDIC insured?

4 A Yes.

5 Q And what is your job at Celtic Bank?

6 A I'm the senior vice president, compliance officer.

7 Q Can you just tell us what that means? What is a compliance
8 officer?

9 A I oversee compliance with laws and regulations throughout our
10 entire bank.

11 Q Can you just describe, what are your roles and
12 responsibilities on a day-to-day basis?

13 A Sure. I work heavily in regulation, including bank secrecy
14 act, anti-money laundering. I oversee our fraud department.

15 Q And how long have you worked at Celtic Bank?

16 A Four years.

17 Q Have you had any other roles in your time there?

18 A I have been in compliance the entire time. I have had other
19 positions within compliance.

20 Q And as part of that role, are you familiar with the customers
21 of Celtic Bank?

22 A Yes.

23 Q Who are they, primarily?

24 A Primarily small business owners.

25 Q And what types of services does Celtic Bank offer small

1 businesses?

2 A We offer loans, primarily, to small businesses.

3 Q And are you familiar with the term "SBA lender" or
4 SBA-approved lender"?

5 A Yes.

6 Q Is Celtic Bank an SBA-approved lender?

7 A Yes.

8 Q Are you familiar with the Paycheck Protection Program?

9 A Yes.

10 Q What was your understanding of the purpose of that program?

11 A In March 2020 Congress enacted the CARES Act, which allowed
12 for the Paycheck Protection Program, to enable relief to small
13 businesses through SBA-approved lenders.

14 Q And what role, if any, did Celtic play with respect to the
15 PPP?

16 A We extended Paycheck Protection Program loans.

17 Q Was Celtic Bank an approved lender in the PPP, from the
18 beginning of the program?

19 A Yes.

20 Q If a Celtic Bank customer was interested in applying for a
21 PPP loan, how would that customer apply through Celtic Bank?

22 A They would fill out an online application through
23 celticbank.com.

24 Q And did you need to be an existing Celtic Bank customer to
25 apply for a loan?

1 A No.

2 Q And after the customer went to celticbank.com, what would
3 happen next?

4 A They would provide all the information required in the
5 application, which was substantially the same as the SBA's form.
6 They also had to provide identity verification information and
7 payroll documents, and other supporting documentation for the
8 loan.

9 Q And who determined what type of information Celtic Bank
10 requested from the borrowers?

11 A We worked off the SBA's interim final rule that implemented
12 the PPP.

13 Q And can you tell us, where is Celtic Bank's servers located?

14 A Salt Lake City, Utah.

15 Q Is that where a PPP application would be received?

16 A Yes.

17 Q And is that where a PPP loan note would go?

18 A Yes.

19 Q Did Celtic Bank have any servers in Washington State?

20 A No.

21 Q You mentioned that Celtic Bank had its own website that
22 borrowers could fill in their information on. Was the
23 information that Celtic Bank requested -- strike that. Did
24 Celtic Bank ask the same questions that were on the SBA form?

25 A Yes. Among other questions.

1 Q And was it important to Celtic Bank that applicants provided
2 truthful and accurate information in their responses?

3 A Yes.

4 Q And why was that?

5 A The lenders were allowed to rely on the borrower's
6 certifications made in the application to extend the loan.

7 Q Was there something in particular about the circumstances of
8 the PPP that made the SBA establish that rule?

9 A Yes. The SBA, along with the U.S. Government, were trying to
10 get funds out quickly, due to the pandemic and the need for
11 relief.

12 Q And so among the questions that were asked, what sorts of
13 questions would be asked?

14 A The borrower was to tell us how many employees they had, how
15 much payroll they had, in a given year, an average monthly
16 payroll. They were also required to certify to certain things,
17 such as, you know, criminal history, their loan history with the
18 U.S. Government, with the SBA.

19 Q And so you mentioned payroll. Did Celtic Bank expect
20 truthful answers to the question about monthly payroll?

21 A Yes.

22 Q And why was that important?

23 A The monthly payroll amount determined the max loan that they
24 were eligible for.

25 Q And you also mentioned asking about the number of employees.

1 Did Celtic Bank expect truthful answers to the question about
2 number of employees?

3 A Yes.

4 Q Why was that?

5 A The loan amount was capped based on annual salary, per
6 employee, at \$100,000. So if the amount of employees was wrong
7 or inflated, then the loan amount could be inflated, and indicate
8 that they were eligible for an amount that they were actually
9 not.

10 Q And what sort of supporting documentation did Celtic Bank
11 require for these PPP loans?

12 A Generally we required payroll tax forms, so IRS forms, 941,
13 940s, W-3s, W-2s, Schedule Cs, to support the loan amount.

14 Q And did Celtic Bank expect that the supporting tax forms that
15 were submitted with these loan applications were accurate and
16 truthful?

17 A Yes.

18 Q And why was that important?

19 A The loan amount was supported by the tax forms that were
20 provided, or the other forms that were provided. And if they
21 were not accurate, then the loan amount could have been inflated
22 and the borrower would not be eligible for the amount they were
23 requesting.

24 Q So what did Celtic Bank look for on a tax form to corroborate
25 the application?

1 A We looked at wages and then the number of employees. And
2 depending on how -- what period the tax form covered, so we would
3 look at, you know, multiple tax forms, or one, depending on the
4 period. Usually for a year.

5 Q And would it matter -- or, did Celtic Bank expect that
6 applicants answered all of the questions that were found on the
7 form truthfully?

8 A Yes.

9 Q And why did that matter?

10 A Because the interim final rule allowed us to rely on the
11 borrower's certifications in the application in order to extend
12 the loan.

13 Q And would Celtic Bank have funded a PPP loan if it learned
14 that a business lied about its payroll numbers, its employees, or
15 probation status?

16 A No.

17 Q Would Celtic Bank fund a PPP loan if it learned that a
18 business had provided fake tax forms --

19 A No.

20 Q -- as part of its application.

21 Sorry, go ahead.

22 A No. Will you rephrase? Sorry.

23 Q Yes. Would Celtic Bank have funded a PPP loan if it learned
24 that a business had provided fake tax forms as supporting
25 documentation?

1 A No.

2 Q What steps, if any, would Celtic Bank have taken if they
3 learned that a PPP -- or that a business made false statements or
4 provided fake tax forms and had actually been approved for a
5 loan?

6 A We would attempt to recover the funds by contacting the
7 receiving financial institution and asking them to provide the
8 funds back to us from the borrower's account. And we would also
9 report the same to law enforcement.

10 MR. CONNELLY: Thank you. Nothing further.

11 THE COURT: All right.

12 CROSS-EXAMINATION

13 BY MR. NANCE:

14 Q Good afternoon, is it Ms. Liddiard?

15 A Liddiard, yes.

16 Q Is that right?

17 And, again, your title at Celtic Bank is?

18 A SBP compliance officer.

19 Q Okay. How large is Celtic Bank?

20 A In terms of dollars?

21 Q Yeah.

22 A Right now we have assets of about \$2 billion.

23 Q When you say "assets of," does that include money that's
24 loaned out?

25 A Assets are the loans that are currently on the books.

1 Q So you have got \$2 billion out on loan now?

2 A Yes.

3 Q That you hope to get back, right?

4 A Correct.

5 Q In your bank, how many -- you are in Utah?

6 A Yes.

7 Q And do you have -- are you outside the state at all?

8 A We have very few employees that are outside the state of
9 Utah.

10 Q Do you have a marketing department?

11 A Yes.

12 Q I mean, they market the banks services, but do they market
13 loans?

14 A Yes.

15 Q Loan origination would be the name for that?

16 A Yes.

17 Q Of that \$2 billion that is loaned out, that's outstanding,
18 how much of that would be PPP loans?

19 A Currently we have about \$1 billion extended.

20 Q Okay. So about half of the bank's total business is PPP
21 loans?

22 A As of today, yes.

23 Q Was it more this time a year ago, or less?

24 A More.

25 Q More.

1 How many loan, PPP loans, comprise that \$1 billion?

2 A I wouldn't be able to say. I don't know as of today.

3 Q Well, do you know the average size of the PPP loans that
4 Celtic extended?

5 A We -- yes. The average size was around \$30,000.

6 Q So smaller loans?

7 A Yes.

8 Q Yeah.

9 So I believe the -- isn't the lending fee structure 5 percent
10 on loans, on smaller loans?

11 A I can't speak to that.

12 Q You don't know?

13 A I wasn't a part of the lending fee.

14 Q You don't know what the bank made through lending --

15 A I do not.

16 Q -- PPP loans?

17 THE COURT: One at a time, please.

18 MR. NANCE: Sorry.

19 Q You testified about the amount of the payroll of a PPP
20 borrower being in direct relation to the amount of money that
21 could be loaned through the program.

22 A Yes.

23 Q Right?

24 The larger the payroll, the more that the applicant becomes
25 qualified for?

1 A Correct.

2 MR. NANCE: That's all I have. Thank you.

3 MS. CONNELLY: Nothing, Your Honor.

4 THE COURT: You may step down. Put your mask back on,
5 please.

6 MR. WERNER: The government calls David Haagsma.

7 DAVE HAAGSMA,

8 having been sworn under oath, testified as follows:

9 THE COURT: Take your mask off, please.

10 THE WITNESS: Thank you.

11 DIRECT EXAMINATION

12 BY MR. WERNER:

13 Q Good afternoon.

14 A Good afternoon.

15 Q Please state your name and spell your last name?

16 A Dave Haagsma. Last name is H-A-A-G-S-M-A.

17 Q Mr. Haagsma, what city and state do you live in?

18 A I live in Grand Rapids, Michigan.

19 Q What do you do for work?

20 A I work in commercial banking at Huntington Bank.

21 Q And what is your current position at Huntington Bank?

22 A I'm a portfolio manager, team lead.

23 Q And where did you work last year, in 2020?

24 A TCF Bank.

25 Q What is the relationship between TCF Bank and Huntington

1 Bank?

2 A Sure.

3 Huntington acquired TCF Bank, and that transaction closed
4 this year.

5 Q And so what was your position at TCF Bank in 2020?

6 A In 2020, I was the director of credit support.

7 Q And prior to being the director of credit support, did you
8 have any previous positions with TCF Bank?

9 A I did, yep.

10 Q What were those positions?

11 A I was a relationship manager in commercial lending.

12 Q How long did you work in commercial lending and as a
13 relationship manager in your last position at TCF Bank? How long
14 did you work for TCF Bank?

15 A I worked for TCF Bank for technically twelve years, but the
16 bank changed names a couple of times because of mergers and
17 acquisitions.

18 Q What is TCF Bank? I'm sorry. What was TCF Bank?

19 A Sure.

20 A regional bank, primarily located in Michigan, Ohio,
21 Minnesota, doing commercial lending and also traditional consumer
22 retail.

23 Q In 2020, were the deposits in TCF Bank federally insured?

24 A They were.

25 Q And are you familiar with the term "SBA-approved lender"?

1 A I am, yes.

2 Q And in 2020, was TCF Bank an SBA-approved lender?

3 A Yes, it was.

4 Q And, again, what was your position at TCF Bank in 2020?

5 A I was a director of credit support.

6 Q What were your duties as director of credit support at TCF
7 Bank in 2020?

8 A Yep.

9 My job was to see the -- oversee the underwriting function
10 and the documentation function.

11 Q For what types of loans?

12 A For commercial loans.

13 Q And, generally, was there a size of those loans?

14 A They ranged from as little as \$50,000 up to \$20 million.

15 Q And did TCF Bank participate in the PPP, or Paycheck
16 Protection Program?

17 A We did.

18 Q And what was your role in connection with TCF Bank's
19 participation in the PPP program?

20 A Yep.

21 I led a team that looked at the applications that came in and
22 looked to see -- test eligibility. And then the second part was
23 looking at the loan amount that was applied for and making sure
24 that the documentation that was submitted supported that loan
25 amount.

1 Q And that was you and your team that did that job for TCF
2 Bank?

3 A It was.

4 Q And was TCF Bank involved in the Paycheck Protection Program
5 at the very beginning, around April 2020?

6 A We were.

7 Q How would an applicant for PPP apply with TCF Bank?

8 A We had an online application. So they would go to the TCF
9 website and apply directly through the website -- and we had it
10 set up so it mimicked the SBA application -- and fill out the
11 application, both the loan amount information and then the
12 certifications that an applicant needed to make.

13 Q When an applicant completed a PPP application, where did TCF
14 Bank receive that information?

15 A We received that in through our website portal. And we had
16 people working on those loans in Minnesota, Michigan, and Ohio.

17 Q So if an application was submitted from Washington State,
18 that application would be transmitted in interstate wire
19 communication to either Minnesota, Michigan or Ohio?

20 A Correct.

21 Q Does TCF Bank -- Sorry. What was the purpose of the PPP, to
22 your understanding?

23 A The PPP program was set up to help small businesses that were
24 impacted by COVID, whether they had to shut down or did not have
25 the same revenue because customers could not visit the business,

1 or were shut down themselves. So PPP was there to provide funds
2 to help employers continue to pay their employees, and then also
3 pay utility bills and rent.

4 Q And who created the form application for PPP?

5 A The SBA.

6 Q And is that the form that TCF Bank used -- required its PPP
7 applicants to complete?

8 A Yes.

9 Q What information generally was required to be submitted on
10 that form?

11 A There were really two parts. The first part was establishing
12 the loan amount. So it would ask for monthly payroll, number of
13 employees. And then the second part was certification, various
14 questions to test eligibility.

15 Q So there are eligibility questions and certifications, as
16 well as employees and payroll?

17 A Correct.

18 Q And what types of supporting information did TCF Bank
19 require, to go along with its PPP applications?

20 A Sure. It depended on the applicant type. So, for instance,
21 a business would submit payroll documentation. In that, there
22 were several acceptable documents that could be provided to
23 support the payroll. If it was a sole proprietor, so an
24 individual filing their business taxes on their personal return,
25 then we would require a Schedule C from their personal return.

1 Q Who made the determination whether or not to fund a PPP
2 application that was submitted to TCF Bank?

3 A The bank did.

4 Q And, again, what guidelines did the bank use to make that
5 determination?

6 A We followed the SBA rules.

7 THE COURT: Counsel, you can generally assume if your
8 question begins with "again," it's not needed.

9 MR. WERNER: Yes, Your Honor.

10 Q What was TCF's relationship with Chemical Bank?

11 A Chemical Bank and TCF Bank merged in 2019. And that merger
12 was concluded in 2020, when the systems were converted.

13 Q And what was Chemical -- TCF Bank and Chemical Bank's
14 respective roles in funding PPP loans?

15 A So both banks took in applications. We used the Chemical
16 Bank service department to fund the loans. And that service
17 department was located in Michigan.

18 Q So an application could be received at TCF Bank and funded
19 through Chemical Bank?

20 A Correct.

21 Q That's the same entity?

22 A Yeah. Chemical Bank, a division of TCF.

23 Q Was it important to TCF Bank that the PPP applicants provide
24 truthful and accurate information?

25 A Yes, it was.

1 Q Why?

2 A That was the only thing we had to rely on, was the customer's
3 words, through those certifications. And then the supporting
4 documentation that they provided.

5 Q And if an applicant misrepresented employee -- number of
6 employees, payroll amounts, or made false tax filings, would that
7 matter to TCF Bank?

8 A Yes, it would. All of those items could affect the loan
9 amount or eligibility.

10 MR. WERNER: No further questions. Thank you.

11 THE COURT: Mr. Nance?

12 CROSS-EXAMINATION

13 BY DEFENSE COUNSEL:

14 Q Good afternoon, Mr. Haagsma.

15 A Good afternoon. Haagsma.

16 Q Haagsma, excuse me.

17 I miss your -- you're at TCF Bank now?

18 A I'm at Huntington Bank now. Huntington acquired TCF Bank
19 this year.

20 Q I'm sorry. Your present position at Huntington is what?

21 A I'm in the commercial banking group. I'm a portfolio
22 manager, team lead.

23 Q Okay. In the first half of 2020, you were at TCF?

24 A I was.

25 Q You were. Okay.

1 Did TCF have a -- or does it or did it have a marketing
2 department?

3 A Yes, we had a marketing department.

4 Q Okay. This included the loan origination?

5 A Yes.

6 Q Okay. Are loan originators typically paid by commission?

7 A Loan originators at TCF Bank were paid a base salary. But
8 they did have a bonus potential based on the business that they
9 brought in.

10 Q Okay. Getting loans would be considered getting business?

11 A Correct.

12 Q Right. What -- for the year 2020, what percentage of TCF's
13 lending business was PPP lending as opposed to other types of
14 commercial lending?

15 A Sure. I don't know what the percentage was, but it was a
16 large percentage. Essentially, most conventional lending ceased
17 for the second and third quarter of 2020.

18 Q Do you have a -- can you estimate the number of PPP loans
19 that TCF funded last year, in 2020?

20 A Yes. 2020 round one, it was roughly 16,000.

21 Q And I didn't ask you. How large of a bank is TCF?

22 A Yeah. TCF, pre-Huntington acquisition, was about \$60
23 billion.

24 Q I think we're learning, when that is stated, that's the
25 amount of outstanding loans?

1 A That's the asset size. So loans make up the majority of the
2 assets, yes.

3 Q And you're saying that about 16,000 PPP loans were funded
4 last year in 2020?

5 A Correct.

6 Q Do you have an estimate of the aggregate loan value of those
7 PPP loans?

8 A I believe it was right around \$2 billion.

9 Q And we could do math, but what was the typical size of the
10 PPP loan?

11 A I can't do math that quickly in my head. But just going off
12 of the applications and anecdotally, I would say most of the
13 loans were -- a majority were under \$100,000.

14 Q And TCF screened the loan applications and funded them
15 themselves and serviced them afterwards, is that so?

16 A Correct.

17 Q And then Huntington took those over when the merger occurred.
18 And they are doing that now?

19 A They did, those that were not already forgiven.

20 Q What role did TCF have in the forgiveness process?

21 A A similar role as taking in the original application. So we
22 took in the forgiveness applications, reviewed those, based on
23 the requirements of the program, which is based on the size of
24 the loan, and then submitted those forgiveness applications to
25 the SBA.

1 Q Okay. When they're forgiven, the lender -- or, I'm sorry,
2 the borrower gets forgiven and you, the lender, gets reimbursed,
3 right?

4 A Yes. Yep. So the SBA pays off the bank loan, since the bank
5 funded the PPP.

6 Q Okay. And so there's three ways that such a loan could go.
7 It could go out to the term of the loan, and be paid. There
8 could be a default, in which case the SBA would guarantee it and
9 pay you, pay TCF. Or it could be forgiven, in which case the
10 borrower is off the hook, and you, the lender, are reimbursed for
11 what you loaned out?

12 A Correct. If there's a default, there's a guarantee. But the
13 SBA, and from our experience being a preferred lender, the SBA
14 could come back and look at our due diligence process. And if we
15 didn't follow the rules, that could jeopardize the guarantee.

16 Q Okay. That's never happened, though, right? It hasn't
17 happened yet?

18 A On PPP?

19 Q Yes.

20 A Not that I'm aware of.

21 Q Okay. Thank you.

22 THE COURT: Redirect?

23 MR. WERNER: No. Thank you, Your Honor.

24 THE COURT: All right. You may step down. Put your
25 mask back on.

1 Ladies and gentlemen, we will recess until tomorrow morning
2 at 9 a.m. Please remember the Court's admonitions not to discuss
3 the case with anyone, not even amongst yourselves, not with
4 anybody else. Don't let anybody talk to you about the case,
5 don't do any research or investigation about the case, and don't
6 read, listen, or watch anything about the case.

7 I will see you tomorrow morning at 9:00. We will be in
8 recess.

9 THE CLERK: Please rise. Court is in recess.

10 (Adjourned.)

11
12 C E R T I F I C A T E

13
14 I, Nickoline M. Drury, RMR, CRR, Court Reporter for the
15 United States District Court in the Western District of
16 Washington at Seattle, do certify that the foregoing is a correct
17 transcript, to the best of my ability, from the record of
18 proceedings in the above-entitled matter.

19
20
21 /s/ Nickoline Drury

22 Nickoline Drury
23
24
25